

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 9, 2022**SUPREME COURT - CIVIL CASES****HARDIN V. TOWN OF LEAKESVILLE****CIVIL - PROPERTY DAMAGE**

TORTS - NEGLIGENCE - ELEMENTS - To prevail on a claim of negligence, the plaintiff must prove (1) duty, (2) breach of duty, (3) causation, and (4) damages by a preponderance of the evidence; failure by the plaintiff to present sufficient proof as to any one of the elements of negligence requires the claim be denied

TORTS - NEGLIGENCE - CAUSATION - In regards to causation, a plaintiff must introduce evidence that provides a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result; the mere possibility of such causation is not enough

NEGLIGENCE - EVIDENCE - CIRCUMSTANTIAL EVIDENCE - Proof by circumstantial evidence of the necessary factual causal connection for negligence liability must be sufficient to make the plaintiff's asserted theory reasonably probable, not merely possible, and more probable than any other theory based on such evidence

NEGLIGENCE - CAUSATION - INFERENCE - Negligence may be proved by circumstantial evidence where the circumstances are such as to remove the case from the realm of conjecture and place it within the field of legitimate inference

FACTS

Jean Hardin sued the Town of Leakesville (“Leakesville”) in September 2015 asserting that the town wrongfully filled existing drainage ditches near her home which caused water to seep into the crawlspace underneath her home during heavy rains which resulted in mold and rot damage to her home. In her complaint, Hardin stated that she determined the flooding problem began after Leakesville passed an ordinance closing a street in July 1993. Hardin claimed that the damage was caused by water not being properly drained away from her home and attached the minutes of a town board meeting to her complaint. Leakesville responded by denying any negligence on its part and denying that the minutes from the July 1993 board meeting contained any ordinance closing a street. Following discovery, Leakesville filed a motion to strike Hardin’s designated experts and a motion for summary judgment asserting that Hardin could not establish proximate cause and damages attributable to Leakesville. The trial court granted both motions and concluded that Hardin did not provide competent summary judgment evidence that the water underneath her house was caused by any act or omission attributable to Leakesville. The trial court held that because neither Hardin nor her witnesses ever observed water seep or flow into the crawlspace, the claim would require specialized knowledge within the scope of Miss. R. Evid. 702 to establish proximate cause. The trial court found that Hardin’s deposition testimony and the deposition testimonies from her witnesses were insufficient to prove causation. The trial court further found that the sworn affidavit of Leakesville’s expert, Jason Grover, had provided that the water accumulated underneath Hardin’s house was not caused by any acts or omissions by Leakesville.

The evidence presented in support of Hardin’s causation claim included, photographs showing water inside the crawlspace of Hardin’s house, a photograph showing rainwater in a ditch located on the southside of Hardin’s property, and a photograph showing standing water in the yards of two of Hardin’s neighbors. The causation evidence also consisted of Hardin’s testimony and testimony from Hardin’s designated expert and fact witnesses, Eldridge Arnold and Charlie Martin. In her deposition, Hardin stated, among other things, that she did not know when water began to accumulate underneath her house and that she never saw any water flow into the crawlspace. Hardin also said she believed the seepage was due to a lack of adequate drainage from the ditches around her property and that in previous years there was never a problem with standing water in the yard. Additionally, Hardin said the ditch south of her property

was once deeper and ran the whole length of the alley west of her property and Leakesville filled in the ditch at the request of another property owner, but stopped at Hardin's property line. Martin testified that he was a licensed plumber and had inspected the plumbing underneath Hardin's home and claimed that he remembered seeing some standing water underneath the house and did not see any plumbing leaks. However, Martin was unable to say where the water originated from, and could not remember whether it had recently rained when he inspected the plumbing. Martin also stated he never performed any testing to measure the soil's water absorption. Arnold testified that he had no formal engineering background and did not hold any special licenses or certificates relating to plumbing, hydrology, or surveying. Arnold stated that he observed standing water around Hardin's property and underneath her house, and on one occasion, he observed only mud underneath the house. In his opinion, the standing water under the house seeped in from the soil due to a high water table. Arnold was unable to say how long the water he observed under Hardin's house had been there or where it originated. Arnold stated that he did not perform any soil test, and was unaware of the water level for the type of soil on Hardin's property. Through Arnold's deposition testimony, Hardin submitted a photograph of the south ditch taken by Hardin's attorney in January 2019, at which time Arnold said he had been present. The photograph depicted a small ditch running west-to-east, downhill from Hardin's house, and it showed water in the ditch. Hardin also submitted a photograph that showed standing water in the front yards of Hardin's neighbors.

In its motion for summary judgment, Leakesville presented an affidavit from Grover, a civil engineer who had inspected Hardin's house and property in December 2013 and February 2017. The affidavit was sworn in August 2020 and included exhibits consisting of photographs and two reports authored by Grover in 2013 and 2018 which were prepared for Hardin's home insurance provider. Grover stated in his affidavit that he observed moisture and standing water in the crawlspace under Hardin's house and noted that Hardin did not have a gutter system around the perimeter of her roof. Grover conducted a relative elevation survey on Hardin's yard which confirmed poor drainage conditions and the ground surface of Hardin's property was measured to slope down toward the house's crawlspace. The survey showed that Hardin's property around the house was mostly flat, and the crawlspace was positioned below the adjacent grade of the property which allowed rainwater to flow toward and accumulate in the crawlspace. According to Grover, a large portion of Hardin's rear yard sloped downwards toward a drain inlet on the south side of her rear yard consisting of mostly clogged PVC pipes inside the fence line on Hardin's property. Grover noted two drainage ditches on Hardin's property and stated that both ditches generally sloped downwards for downhill draining and that neither ditch was the contributing cause of water underneath Hardin's house. Grover also noted poor ventilation in the crawlspace and that there were no crawlspace vents on the north side of Hardin's house where he noted standing water. Six of the eleven crawlspace vents Grover observed around the house were closed. Grover also observed a disconnected dryer exhaust vent with evidence of discharge of clothes-dryer exhaust into the crawlspace, water dripping from a rusted and deteriorated shower pan under the west bathroom into the crawlspace, and water dripping from a deteriorated cast iron drain line beneath the west bathroom into the crawlspace. Grover concluded that the crawlspace's poor ventilation, dryer exhaust discharge, leaks in the crawlspace, and the poor site drainage on Hardin's property created the standing water and moisture issue in the crawlspace.

In response to Leakesville's motion for summary judgment, Hardin claimed that Grover's 2018 report was inconsistent with his 2013 report. Based on Arnold's deposition testimony, Hardin claimed in her summary judgment response that the water Grover was referencing came into the yard of her neighbor and then into Hardin's yard. Hardin indicated that this supported her theory that the water underneath the house was the result of seepage water that came up from the saturated ground because the water underneath the house was clear. Hardin argued that Grover's report did not contain evidence that Grover conducted any examinations or proof of results of an elevation survey other than his visual inspection of the premise. Hardin also claimed that Grover attempted to modify his report and findings for the insurance provider to fit a defense for Leakesville. Hardin also contested the soil information Grover provided in his 2013 report which stated that Hardin's home was built on Savannah fine sandy loam soils. Hardin argued that the fact that her house was built on Savannah fine sandy loam soil had no bearing on the foundation of the house. Hardin maintained that the source of the seepage water was caused by standing water in the south ditch and the excessive water from the road. Hardin also maintained that her water problem did not exist until Leakesville permitted its ditches to be filled and failed to maintain its existing ditches. Hardin claimed the trial court was precluded from granting summary judgment because Leakesville did not address or contest Hardin's proof that water drained onto the north side of her property, nor did Leakesville address the blocked drainage on the west side of Hardin's property. Hardin argued that Grover limited his observations and that his opinion that rainwater accumulated in the crawl space at the northwest corner of her house

coincided with Arnold’s deposition testimony that he saw water crossing the road onto the yards of the neighbors. Hardin also claimed that Grover’s report constituted a statement against interest that corroborated her proof that water flowed and accumulated under the house on the west and north sides. Hardin also argued that Grover was the expert for her home insurance provider, which she previously sued for denial of coverage concerning water damage to her home. Hardin submitted that Grover opined in that case that the ditches were the contributing cause of damage to her home. Summary judgment was granted in favor of the Leakesville. Hardin appealed.

ISSUE

Whether the circuit court erred in granting the motion for summary judgment in favor of Leakesville.

HOLDING

Because Hardin did not introduce evidence that provided a reasonable basis for the conclusion that the water accumulated under her house was caused by an act or omission attributable to Leakesville to meet the element of causation, and because the failure to present sufficient evidence as to any of the elements of negligence requires the claim be denied, the circuit court did not err in granting the motion for summary judgment in favor of Leakesville. Therefore, the Supreme Court affirmed the judgment of the Greene County Circuit Court.

Affirmed - 2020-CA-01164-SCT (June 9, 2022)

Opinion by Justice Beam

Hon. Stephen B. Simpson (Greene County Circuit Court)

A. Malcolm N. Murphy for Appellant - L. Grant Bennett Sr. for Appellee

Briefed by [Abbey Bufkin](#)

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MAGEE V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - GUILTY PLEA - ERRONEOUS ADVICE - A guilty plea is voluntary despite erroneous advice by counsel if the defendant’s misconception is corrected by the court during the plea colloquy

POST-CONVICTION RELIEF - GUILTY PLEA - VOLUNTARINESS - It is not a prerequisite to a voluntary plea that the defendant understand the nature of parole, his eligibility for parole, and the circumstances under which it may be granted; however, a plea is involuntary if a defendant is affirmatively informed regarding the possibility of parole and pleads guilty in reliance on the misinformation

FACTS

Kendall Magee pled guilty to second-degree murder and possession of a firearm by a convicted felon and was sentenced to twenty-five years in Mississippi Department of Corrections (“MDOC”) custody. Magee filed a motion for post-conviction relief (“PCR”) and requested that his guilty plea be vacated. In support of his motion for PCR, Magee attached affidavits from himself, his mother, and his two aunts. In his affidavit, Magee stated that his trial counsel advised him that his sentence would only be six to seven years if he took the plea deal, and if not for his trial counsel affirmatively stating this, he would have taken his case to trial. In her affidavit, Magee’s mother said that she was present when Magee’s attorney advised him to take the plea deal and that he would only serve six to seven years if he did. In response to Magee’s motion for PCR, the circuit court ordered an evidentiary hearing. The circuit court denied Magee’s motion for PCR at the hearing, finding no merit to his claims, and held that Magee understood his rights and all implications of the plea sentencing proceedings. Further, the circuit court found nothing in the record to substantiate Magee’s claims that his attorney misrepresented the consequences of the plea. Magee then appealed the circuit court’s decision to the Court of Appeals. On appeal, the Court of Appeals affirmed the circuit court’s decision and found that the lower court’s decision to deny PCR was not clearly erroneous. After the Court of Appeals denied Magee’s motion for rehearing, Magee petitioned for writ of certiorari.

ISSUE

Whether the trial court erred in failing to address Magee’s claims during the evidentiary hearing that he was misinformed as to the consequences of his guilty pleas and that those pleas were given in reliance on the alleged misinformation.

HOLDING

Because Magee asserted in his motion for PCR that he was affirmatively misinformed regarding the possibility of early release, and because he stated in his affidavit that he pled guilty in reliance on the misinformation, the circuit court erred in failing to address the issue. Therefore, the Supreme Court reversed and remanded the judgment of the Walthall County Circuit Court.

Reversed & Remanded - 2019-CT-01794-SCT (June 9, 2022)

En Banc Opinion by Justice Griffis

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

Pro se for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Chandler Coleman](#)

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McGEE V. COMPREHENSIVE RADIOLOGY SERVS., PLLC

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

TORTS - CONVERSION - RECOVERY OF MONEY - While the tort of conversion cannot be used to recover a mere debt, it can be used to recover identifiable money belonging to the plaintiff

CORPORATIONS - OFFICERS - PERSONAL LIABILITY - When a corporate officer directly participates in or authorizes the commission of a tort, even on behalf of the corporation, the individual may be held personally liable

TORTS - CONVERSION - ELEMENTS - Conversion has occurred where money or property of a third person is in the hands of the corporation and the officers in control knowingly and intentionally convert it by refusing to give up possession, or by applying it to the uses of the corporations

FACTS

Karen McGee was the president of Network Services, Inc. (“the agency”), a collections agency that contracted with Comprehensive Radiology Services, PLLC (“Comprehensive Radiology”) to collect debts in exchange for a commission. The contract terms stipulated that the agency would remit all money collected on Comprehensive Radiology’s behalf at the end of the month and would receive a commission check based on that amount within ten days. When the agency began to struggle financially, McGee told her administrator to transfer the money the agency had collected on Comprehensive Radiology’s behalf and, instead, transfer that money from a client escrow account into the agency’s operating account. Although the collected funds were withheld from Comprehensive Radiology, the agency continued to bill for and receive commissions on those funds. By the time Comprehensive Radiology noticed the discrepancies, the agency owed almost \$800,000. Although the agency declared bankruptcy, Comprehensive Radiology proceeded with tort claims of fraud and conversion against McGee individually. At a bench trial, the chancellor found that because McGee had committed fraud, she was individually liable to Comprehensive Radiology. McGee appealed.

ISSUES

Whether (1) the trial court erred in finding McGee personally liable and (2) money could have been the subject of conversion.

HOLDING

(1) Because McGee committed conversion by directing her employee to delay the remittance of funds that belonged to Comprehensive Radiology, the trial court did not err in finding her personally liable. (2) Because the money collected for Comprehensive Radiology was easily identifiable, and because the contract specified that any funds collected belonged solely to Comprehensive Radiology, the collections were not debt and thus, could have been the subject of conversion. Therefore, the Supreme Court affirmed the judgment of the Forrest County Chancery Court.

Affirmed - 2021-CA-00666-SCT (June 9, 2022)

Opinion by Justice Maxwell

Hon. Rhea Hudson Sheldon (Forrest County Chancery Court)

William J. Little Jr. & William Jarrett Little for Appellant - J. Robert Ramsay for Appellee

Briefed by [Rachel Gholson](#)

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MEREDITH V. CLARKSDALE DEMOCRATIC EXEC. COMM.

CIVIL - ELECTION CONTEST

ELECTION LAW - CANDIDATE REQUIREMENTS - RESIDENCY - Pursuant to Miss. Code Ann. § 23-15-300, a municipal election candidate must be a resident of the municipality in which they wish to serve for two years immediately prior to the day of the election

ELECTION LAW - CANDIDATE REQUIREMENTS - RESIDENCY - Pursuant to Miss. Code Ann. § 23-15-300, municipal election candidates must prove their residency in their qualifying paperwork by a preponderance of the evidence; if they do not prove their residency in the qualifying paperwork, then they must prove their residency by absolute proof on or before the date of the election

ELECTION LAW - CANDIDATE REQUIREMENTS - RESIDENCY - Candidates' residency is based upon an individual's physical location and intent to remain at that location indefinitely

FACTS

In February of 2021, Scotty Meredith ran for mayor of Clarksdale. On his paperwork, Meredith listed his residence as 1128 Park Circle in Clarksdale, which belonged to his mother-in-law. The then-mayor, Chuck Espy, challenged whether Meredith was qualified to run on the grounds that Meredith was not a resident of Clarksdale. Espy specifically alleged that Meredith did not live at 1128 Park Circle, but rather at a lake house located at 116 Meredith Road in Alligator. Meredith responded to Espy's challenge by asserting that he actually lived at 314 East Second Street in Clarksdale. This was the address of a funeral home that Meredith owned and operated. The Clarksdale Democratic Executive Committee ("CDEC") then held a hearing to consider Meredith's qualifications. The CDEC determined that Meredith was not a Clarksdale resident, as he had provided no proof that he actually resided at his funeral home. The CDEC, therefore, determined that Meredith was unqualified to run in the mayoral election. Meredith appealed the committee's decision, and a trial was held in March 2021. At trial, Meredith again confirmed that he did not, and had never, lived at his mother-in-law's address. He stated that he originally provided this address because in 2019 when he ran for coroner, he was informed that he could not use his funeral home address since it was a business address. Meredith further testified that he moved to his lake house in 2000 and that, as of the time of the trial, still owned the house, paid its utilities, and had filed a homestead exemption on the lake house. Meredith's vehicles were registered to the lake house address, and it was listed on Meredith's driver's license. Meredith also testified that in 2018, he built an apartment on the back of his funeral home that was meant to be his permanent residence. Meredith testified that he had moved into the apartment in April 2018. The trial court ultimately determined that Meredith was a resident of the lake house for election purposes. The ruling was based on the conflicting addresses from his qualifying paperwork, his voter registration not being his place of residence, and his homestead exemption on the lake house. Meredith appealed.

ISSUES

Whether (1) the trial court applied the correct legal standard when determining whether Meredith had met the residency requirements for election and (2) whether the trial court's finding that Meredith had failed to satisfy the two-year residency requirement was against the weight of credible evidence.

HOLDING

(1) Because Meredith abandoned his claim that he lived at the residence in his qualifying information, thus forfeiting the preponderance-of-the-evidence standard and assuming the burden of absolute proof, the trial court applied the correct standard when it determined Meredith had not shown absolute proof that he resided at the funeral home. (2)

Because there was proof that Meredith continued to maintain the lake house, own the lake house, pay the lake house's utilities, and enjoy the benefits of a homestead exemption on the lake house, and because Meredith's vehicles and driver's license were registered to the lake house, the trial court's determination was not against the weight of credible evidence. Therefore, the Supreme Court affirmed the judgment of the Coahoma County Circuit Court.

CONCURRENCE IN PART AND IN RESULT

Justice Coleman agreed with the majority's interpretation of the burden of proof language in Miss. Code Ann. § 23-15-300 for candidates that cannot establish their residency in their qualifying paperwork. However, he disagreed that the trial court did not err by requiring an incorrect burden of persuasion. He then argued that the trial court did not apply the standard correctly but found the failure was harmless error.

Affirmed - 2021-EC-00305-SCT (June 9, 2022)

En Banc Opinion by Justice Griffis - Concurrence in Part & in Result by Justice Coleman

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

Jamie F. Lee for Appellant - Amanda J. Tollison & Deondrey R. Russell for Appellees

Briefed by [Marianna Nichols](#)

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MISS. STATE PORT AUTH. AT GULFPORT V. EUTAW CONSTR. CO., INC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - DISCOVERY OF ERRORS - MINOR INFORMALITIES - 12 Miss. Admin. Code Pt. 6, R. 3.106.12.4(1) provides that minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible; the Agency Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State

ADMINISTRATIVE LAW - BIDDING – MISTAKES - 12 Miss. Admin. Code Pt. 6, R. 3.106.12.4(2) stipulates that if the mistake and the intended correct bid are clearly evident on the bid document, the bid shall be corrected on the intended correct bid and may not be withdrawn; examples of mistakes that may be clearly evident on the bid document are typographical errors, errors in extending unit prices, and mathematical errors

FACTS

The Mississippi State Port Authority at Gulfport ("MSPA") was responsible for restoring the state port through various construction projects, including the project at issue. In February 2012, the MSPA commenced a bid solicitation for the project, and the deadline to submit was in March. In February, MSPA issued an addendum to the bid solicitation, which doubled the quantity of riprap and aggregate base course required to construct a temporary haul ramp. Bidders were required to submit their bids on a revised bid form based on the addendum. In March, MSPA publicly opened the bid envelopes submitted for the project. W.C. Fore Trucking, Inc.'s ("Fore") bid, amongst eleven others including Eutaw Construction Company, Inc. ("Eutaw"), was the lowest. The following day, MSPA wrote Fore a letter informing it of errors in its bid based on 12 Miss. Admin. Code Pt. 6, R. 3.106.12.4. The errors cited were that (1) Fore used the original Bid Form rather than the amended Bid Form and this caused Fore to include the incorrect quantities for riprap and aggregate base course; (2) Fore incorrectly calculated the costs for certain line items in the Bid Form; and (3) the sum of the line item amounts in the Bid Form was significantly less than the total amount of base bid shown in the Bid Form. Fore affirmatively recognized it received the addendum in its bid, so the total amounts were based on the amended form. The total of the bid for these items remained the same even after the revision, so the MSPA decided that the correction would not prejudice other bidders. The MSPA determined the second error was a minor informality and the intended correct bid was evident from the face of the bid, so the errors could be corrected. The MSPA determined that the controlling amount was the sum of the line item totals less the overages from the calculation errors in line item costs. Since the intended correct bid amount was not evident from the Bid submitted, MSPA decided that Fore could either accept the controlling amount or withdraw its Bid. Fore acknowledged the errors in a reply letter and

attached a revised bid form, which included the controlling amount MSPA decided on. After receiving the corrections, MSPA awarded the project to Fore and declared it the lowest bidder. Eutaw submitted a bid protest challenging the award of the project to Fore. MSPA denied the challenge, finding it to be without merit. After MSPA failed to respond to a supplemental bid protest by Eutaw, Eutaw appealed the decision to the circuit court. The circuit court found MSPA's contract award to Fore to be arbitrary, capricious, and illegal since Fore's bid submission was not evident on the face of the bid and the errors were not minor. The circuit court also held that the MSPA improperly allowed the alteration of the bid after bid opening. The circuit court reversed MSPA's decision to award the project to Fore. MSPA appealed.

ISSUES

Whether (1) Fore's bid irregularities were minor and evident on the face of the bid and (2) the MSPA violated Mississippi law by allowing Fore to correct its bid after bid opening.

HOLDING

(1) Because the MSPA's decision to allow the error of submitting the bid on the wrong form to be corrected did not impact the price, quality, or quantity of the bid, because the mathematical errors in the line item calculations, discoverable by a simple mathematical procedure, did not prejudice other bidders and Fore's intended correct bid remained evident, and because the discrepancy between the sum of the line items in Fore's bid and the total amount of the base bid was a simple mathematical error and the intended correct bid remained evident, Fore's bid irregularities were minor and evident on the face of the bid and the decision to allow the corrections was not arbitrary and capricious. (2) Because Fore remained the lowest bidder even after the corrections, and because the errors and the intended correct bid were evident on the face of Fore's original bid, the MSPA did not violate Mississippi law. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

Reversed & Rendered - 2020-IA-00881-SCT (June 9, 2022)

Opinion by Justice Chamberlin

Hon. Winston L. Kidd (Hinds County Circuit Court)

M. Brant Pettis, Ben H. Stone, Mark E. Bond, & James E. Lambert III for Appellant - Dorsey R. Carson Jr., Eric F. Hatten, Lindsay K. Roberts, Kathryn P. Goff, & Kelli M. Slater for Appellee

Briefed by [Katie Lee Crockett](#)

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RIVERBOAT CORP. OF MISS. V. DAVIS

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - DEFAULT JUDGMENTS - MOTION TO SET ASIDE - A trial court may grant relief under Miss. R. Civ. P. 60(b) based on a sufficient showing by the movant of fraud, mistake, or other justifiable reason

CIVIL PROCEDURE - MOTION TO SET ASIDE - REVERSAL - Reversal of relief pursuant to Miss. R. Civ. P. 60(b) is warranted only when an abuse of discretion is found

TORTS - FRAUD - ELEMENTS - To constitute fraud, the movant must show: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of the truth, (5) his intent that it should be acted on by the person and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) his reliance on its truth, (8) his right to rely thereon, and (9) his consequent and proximate injury

FACTS

In 2015, Tresyla Davis filed a premises liability action against Riverboat Corporation of Mississippi ("Riverboat") after Davis alleged that she suffered injuries from a defective chair at Riverboat's casino, Golden Nugget Biloxi Hotel and Casino. Riverboat filed a motion for summary judgment, which the trial judge granted because Davis had failed to produce sufficient evidence of her claim. Months later, Davis filed a motion to reopen the case and set aside summary judgment pursuant to Miss. R. Civ. P. 60(b)(1). Davis contended that she discovered fraudulent behavior by Riverboat

during the previous litigation. Specifically, Davis argued that certain deposition testimony by Riverboat, which stated there were no malfunctions or defects in the chair, was fraudulent and misleading because the chairs had been modified. The trial court granted Davis's motion to reopen the case and to set aside summary judgment. Riverboat appealed.

ISSUES

Whether the trial court (1) abused its discretion by granting Davis's motion to reopen the case and set aside summary judgment and (2) erred by granting the Miss. R. Civ. P. 60(b)(1) motion.

HOLDING

(1) Because Davis only asserted misrepresentations made by Riverboat in her motion without properly asserting the remaining elements of fraud, the trial court abused its discretion by granting Davis's motion to reopen the case and set aside summary judgment. (2) Because Davis did not show that her claim qualified as an exceptional circumstance and was not merely the result of a mistake or gross negligence, the trial court erred by granting the Miss. R. Civ. P. 60(b)(1) motion. Therefore, the Supreme Court reversed and rendered the judgment of the Harrison County Circuit Court.

Reversed & Rendered - 2020-IA-01244-SCT (June 9, 2022)

Opinion by Presiding Justice Kitchens

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

Samuel Deucalion Gregory & Robert Christopher White for Appellant - Carlos Eugene Moore for Appellee

Briefed by [Ansley L. McLellan](#)

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SUPREME COURT - ORDERS

McLEMORE V. STATE

EN BANC ORDER

ORDER

Joe W. McLemore, Jr., a pro se defendant, filed an Application for Leave to Proceed in Trial Court. McLemore had previously filed two other applications for leave after his conviction and sentence as a habitual offender had been affirmed on direct appeal and his sentence was mandated in 1998. Like his most recent Application for Leave to Proceed in Trial Court, McLemore alleged that his habitual offender sentence, pursuant to Miss. Code Ann. § 99-19-81, was illegal. However, the Supreme Court found that McLemore's application was procedurally barred by time, as a successive application, and through the doctrine of res judicata. Further, the Supreme Court warned McLemore that filing frivolous documents with the court in the future could result in both monetary sanctions and restrictions on filing applications for post-conviction collateral relief in forma pauperis. Therefore, McLemore's Application for Leave to Proceed in Trial Court was denied.

OBJECTION IN PART

Presiding Justice King agreed that McLemore's claims were without merit. However, he argued that should McLemore file frivolous documents in the future, he would not impose monetary sanctions or restrictions on filing applications for postconviction collateral relief in forma pauperis. He contended that a criminal defendant such as McLemore likely did not have the funds to afford monetary sanctions, which would ultimately deter him from further appealing his conviction with the State. Arguing that the Supreme Court seemed to prioritize efficiency over justice, he went on to say that restricting McLemore's ability to file applications for postconviction collateral relief in forma pauperis would cut off his access to the court, a violation of McLemore's constitutional right. Rather than imposing sanctions or restricting McLemore's access to the courts, he opined that any frivolous motions filed with the court in the future should simply be dismissed or denied.

Denied with Sanctions Warning - 2016-M-00364 (June 2, 2022)

En Banc Order by Justice Chamberlin - Objection in Part by Presiding Justice King

Briefed by [John McDonald](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 7, 2022

COURT OF APPEALS - CIVIL CASES

DUREN V. EFFEX MGMT. SOLS., LLC

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - DISABILITY - DEFINITION - Pursuant to Miss. Code Ann. § 71-3-3(i), disability is defined as incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment, which incapacity and the extent thereof must be supported by medical findings
WORKERS' COMPENSATION - MAXIMUM MEDICAL RECOVERY - DETERMINATION - Whether and when a claimant has reached maximum medical recovery are questions that are to be determined by the Commission based on testimony from both lay and medical witnesses

FACTS

In July 2014, J.W. Duren was working as a general laborer for the temporary staffing agency, Effex Management Solutions (“Effex”) when he fell from a table and injured his back. Four days after his injury, Duren sought treatment at the Mallory Health Center in Lexington, reporting back and leg pain. Duren was referred to Dr. Graham Calvert by Dana Roberts, and in September 2016, Dr. Calvert began treatment of Duren, when he then discovered a disc herniation in Duren’s back. Dr. Calvert recommended steroid injections and placed Duren on light work restriction. Duren returned to Dr. Calvert twice more during 2016, and due to continued pain as well as worsening of the herniations, Dr. Calvert performed a microdiscectomy in December 2016. In March 2017, Duren returned to Dr. Calvert and reported no pain, and then a few days later returned to work. Effex paid Duren temporary total disability benefits at the rate of \$332.37 per week from July 2016 through March 2017, when Dr. Calvert placed Duren at Maximum Medical Improvement (“MMI”) and released him to return to work without restrictions. After working for a few hours, Duren reported that he was in pain. Duren’s supervisor advised him to seek medical treatment. Duren returned to work the next day, but after working several hours, he advised his supervisor that he was again suffering pain. Duren did not show up for work the following two days, so Effex contacted Duren by telephone and terminated his employment. In April 2017, Duren filed a petition to controvert alleging that he suffered a work-related injury to his back, his left leg, and his body while working for Effex. Effex admitted that Duren suffered a compensable injury to his back, and the parties stipulated that Duren had an average weekly wage of \$498.47 at the time of the injury. Soon after, Duren returned to Mallory Health Center complaining of pain and subsequently filed a motion to compel medical treatment. In July 2017, the Administrative Judge (“AJ”) ordered an Independent Medical Examination (“IME”) to be conducted by Dr. Blount. Dr. Blount evaluated Duren and issued his IME report. Dr. Blount agreed that Duren’s disc herniations were related to his fall at work and that Duren reached MMI in March 2017. In November 2017, the AJ denied the motion to compel medical treatment. Duren filed another motion to compel medical treatment, temporary disability benefits, and payment of medical bills. At the request of Effex, Dr. John Davis, a neurosurgeon, performed an Employer’s Medical Evaluation on Duren and opined that Duren’s disc herniation remained at MMI. Dr. Davis also testified that he agreed with Dr. Calvert’s treatment protocol. Dr. Davis recommended a post-surgery MRI of Duren’s lumbar spine, which Duren underwent, and after a review of this scan by both Dr. Calvert and Dr. Blount, neither could find anything to explain Duren’s complaints of pain. In January 2019, Duren filed a third motion to compel medical treatment, total temporary disability benefits, and payment of medical bills. In March 2019, the AJ denied the motion. After several more motions filed by Duren and an evidentiary hearing, the AJ entered a final order denying Duren’s claim for permanent partial disability and payment of additional temporary total disability benefits and medical expenses. The AJ

acknowledged that Dr. Calvert returned Duren to work without any restrictions and that neither Dr. Blount nor Dr. Davis disagreed with Dr. Calvert's assessment that Duren could return to full-duty work. The AJ found that Duren was only entitled to temporary total disability from the date of injury to the date of MMI but was entitled to continued and necessary treatment of the work injury. Duren appealed from the order of the AJ to the Mississippi Workers' Compensation Commission ("Commission"), and the Commission affirmed and adopted the AJ's final order. Duren appealed.

ISSUES

Whether the Commission erred by (1) finding that Duren sustained no permanent partial disability or loss of wage-earning capacity; (2) failing to award Duren temporary total disability benefits from March 2017 until the present; (3) failing to hold the employer-carrier responsible for Duren's treatment, medications, and mileage at Mallory Health Center; and (4) failing to enter and weigh all the evidence submitted by Duren, Dr. Blount, and Roberts, including a February 2020 IME report and addendum, a physical therapy report, Duren's CT scan from January 2019, and his MRI from October 2018.

HOLDING

(1) Because Duren could not show how his post-injury wages were unreliable, or that his later loss of wages resulted from his injury, the Commission's decision denying permanent partial disability benefits was supported by substantial evidence. (2) Because the record showed that both Dr. Blount and Dr. Davis stated that they either agreed with or deferred to Dr. Calvert's finding of MMI, and because the AJ stated that he gave little weight to another doctor's opinions, the Commission's determination that Duren reached MMI in March 2017 was supported by substantial evidence. (3) Because the Commission did not make any findings regarding physical therapy, because the record did not reflect that Duren requested payment for physical therapy or a referral to physical therapy, and because Roberts did not recommend physical therapy as a treatment for Duren nor refer Duren to a physical therapist, the Commission's decision was supported by substantial evidence in the record and was not clearly erroneous. (4) Because the record does not contain any physical therapy report or Duren's actual CT scan and MRI, because Duren, as the claimant, bears the burden of proving that his work injury resulted in a permanent disability causing him to suffer a loss of wage-earning capacity and the disability must be supported by medical findings, because Duren had the opportunity to submit his physical therapy report and the actual CT scan and MRI at the evidentiary hearing before the AJ, and because the record reflects that he did not submit these documents, the Court of Appeals declined to further address the issue. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Affirmed - 2021-WC-00337-COA (June 7, 2022)

Opinion by Presiding Justice Carlton

Mississippi Workers' Compensation Commission

Pro se for Appellant - Ginger Moore Robey for Appellee

Briefed by [Kelsey Davis](#)

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IN RE RUSH TRUST

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS AND ESTATES - CLAIMS AGAINST THE ESTATE - APPEALABLE ORDERS - An appeal from an order during the administration of an estate that is still open should be filed within thirty days of that order, not upon the estate being finally closed

CIVIL PROCEDURE - JURISDICTIONAL PREREQUISITES - APPEALABLE ORDERS - A timely notice of appeal is a jurisdictional prerequisite to invoke appellate review

CIVIL PROCEDURE - APPEALS - TIMELY NOTICE OF APPEAL - Miss. R. App. P. 4(a) mandates that an appellant file a notice of appeal within thirty days after the date of entry of the judgment or order appealed

FACTS

Representatives of the E.M. Rush Trust (collectively “Lennon”) hired the law firm Lowrey and Fortner, P.A. (“Lowrey”) to terminate the Rush Trust. In June 2020, after filing an initial motion on behalf of Lennon to terminate the trust and distribute the trust assets, Lowrey filed a motion to withdraw as counsel and authorize the trustee to distribute attorney fees. The chancery court granted the order and ruled that the trustee was authorized to distribute \$12,589.04 to Lowrey for attorney fees. Subsequently, Lennon filed a motion to alter or amend the order for the award of disputed attorney fees. In October 2020, the chancery court issued an order finding its initial award of attorney fees upon termination of the trust to be proper. In March 2021, the chancery court issued a final judgment terminating the trust; the attorney fees owed to Lowrey were not mentioned in the final judgment. Less than thirty days later, Lennon appealed.

ISSUE

Whether the court had jurisdiction to hear Lennon’s appeal concerning the chancery court’s orders granting and affirming the award of attorney fees to Lowrey.

HOLDING

Because the October 2020 order resolved a claim against the Rush trust, because an order resolving a claim against an estate was final and appealable even though the estate remained open, because Miss. R. App. P. 4(a) mandated that an appellant file a notice of appeal within thirty days after the date of entry of the judgment or order appealed, and because a timely notice of appeal was a jurisdictional prerequisite to invoke appellate review, the Court of Appeals lacked jurisdiction to hear Lennon’s April 2021 appeal of the chancery court’s October 2020 award of attorney fees to Lowrey. Therefore, the Court of Appeals dismissed the appeal for lack of jurisdiction.

Appeal Dismissed - 2021-CA-00426-COA (June 7, 2022)

Opinion by Judge Lawrence

Hon. Michael Chadwick Smith (Forrest County Chancery Court)

S. Wayne Easterling for Appellants - Richard Anthony Filce for Appellee

Briefed by [Garner Vance](#)

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SEL BUS. SERVS., LLC v. LORD

CIVIL - REAL PROPERTY

PROPERTY - REMEDIES - EQUITABLE LIEN - An equitable lien is the right by which a creditor is entitled to obtain satisfaction of his debt by resort to specified property belonging to the debtor when it is clear that the debtor intended to create an encumbrance; an equitable lien is not appropriate to enforce a contract that otherwise fails to meet the requirements of the statute of frauds

REAL PROPERTY - STATUTE OF FRAUDS - WRITING REQUIREMENT - Under the statute of frauds, contracts involving the transfer of real property must be in writing

FACTS

In November 2019, SEL Business Services LLC (“SEL”) and its manager Skip Lloyd entered into an oral agreement with Dr. Wilburn Lord, Jr., in which SEL agreed to purchase property located in Rolling Fork for \$60,000. SEL never made any payments to Dr. Lord for the property, nor was there a written lease between the parties. SEL later admitted there was no document that purported to be a written contract. However, based on the promise, SEL “moved into and began to do business” in a building on the property. Over the next eight months, SEL paid the taxes and utilities on the building, installed a new air conditioning unit, and rewired the building, among other updates and maintenance. Despite SEL’s presence in the building, Dr. Lord negotiated to sell the property to Sharkey and Issaquena Counties (“Counties”) to benefit the Sharkey-Issaquena Community Hospital. Once aware of the negotiations, SEL filed a petition for injunctive relief against Dr. Lord, who was still the record owner of the property. The day after SEL filed this petition, Dr. Lord sold the property to the Counties for \$110,000. Five days later, SEL filed a lis pendens in the land records,

giving notice of the lawsuit. In July 2020, the Counties sent SEL a letter asking it to vacate the premises within one week. Attached to the letter was the warranty deed conveying the property from Dr. Lord to the Counties. A few days later, SEL amended its petition to add both the hospital and the Counties as defendants. The Counties and Dr. Lord moved for summary judgment, but SEL never responded to either motion. The chancery court then conducted a hearing where no evidence was presented and accepted all factual statements of SEL as true. Despite SEL's alleged investment in the property, the chancellor granted summary judgment in favor of both defendants. The trial court found that the agreement between the parties was unenforceable under the statute of frauds, declaring that the sale of land had to be in writing. SEL appealed.

ISSUES

Whether (1) the underlying contract for the sale of real property was enforceable under the statute of frauds and (2) the equitable remedy of unjust enrichment should have been applied.

HOLDING

(1) Because the parties never reduced the contract for the sale of property to writing, the agreement was invalid pursuant to the statute of frauds. (2) Because the parties never reduced the oral contract to writing, because SEL had no deed to the property, because SEL did not make payments to Dr. Lord that would have given the impression it owned the property, because no evidence was presented that SEL ever sought to close the transaction, and because SEL did not have a mistaken belief that the property actually belonged to SEL, the statute of frauds applied and the equitable remedy of unjust enrichment was unavailable. Therefore, the Court of Appeals affirmed the judgment of the Sharkey County Chancery Court.

Affirmed - 2021-CA-00368-COA (June 7, 2022)

Opinion by Judge McCarty

Hon. Jaye A. Bradley (Sharkey County Chancery Court)

C. W. Walker III for Appellants - Frank J. Dantone Jr., John P. Sneed, Charles Edward Cowan, & Edward D. Lamar for Appellees

Briefed by [Anna Tucker](#)

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SMITH V. ADAMS CNTY. YOUTH CT.

CIVIL - JUVENILE JUSTICE

APPELLATE PROCEDURE - APPEAL AND ERROR - PREMATURE APPEALS - Pursuant to Miss. R. App. P. 4(d), a premature notice of appeal is ineffective until the trial court rules on any pending post-judgment motion

YOUTH COURT - RULES - APPEALS - Under the Uniform Rules of Youth Court Practice, there is no equivalent to a motion for a new trial in a civil case or a criminal case, but the Miss. R. App. Pro. would apply because youth court proceedings are either civil or quasi-criminal

FACTS

The State filed a petition within the scope of the Mississippi Youth Court Act that alleged that PXS, a minor, purposefully, knowingly, and unlawfully engaged in ungovernable or incorrigible behavior by impermissibly using his mother's credit card, refusing to follow rules, using profanity, and engaging in fights with family members. PXS filed a pleading denying the alleged charge, after which the trial court set a hearing date. After his counsel met with the prosecutor, PXS changed his plea from a denial to an admission of guilt. The trial court accepted PXS's plea and adjudicated him as a child in need of supervision for committing acts of governable or incorrigible behavior in violation of Miss. Code Ann. § 43-21-105(k). On February 4, 2021, the trial court conducted a disposition hearing ordering PXS to serve one year of probation, maintain at least "C" or higher grades, attend therapy, and remain in his mother's custody. On February 8, 2021, pursuant to Miss. Code Ann. § 43-21-613, PXS filed a post-disposition motion for modification of the order, requesting that the trial court conduct an informal hearing to review the disposition, arguing that his guilty plea was involuntary due to ineffective counsel. On February 11, 2021, PXS filed a pro se notice of appeal

before the trial court had the opportunity to rule on the motion for modification or review the evidence presented. PXS appealed.

ISSUE

Whether the court had jurisdiction to hear PXS's appeal.

HOLDING

Because PXS prematurely filed his notice of appeal, and because the trial court did not have the opportunity to rule on the motion or review PXS's evidence, the Court of Appeals lacked jurisdiction to hear PXS's appeal. Therefore, the Court of Appeals dismissed the appeal for lack of jurisdiction.

Appeal Dismissed - 2021-CP-00196-COA (June 7, 2022)

Opinion by Judge McDonald

Hon. Walter Jeffrey Brown (Adams County Youth Court)

Pro se for Appellant - No Appearance for Appellee

Briefed by [Le'Ronda Gates](#)

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WARNER V. WARNER

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - PROPERTY DISTRIBUTION - To equitably divide property, chancellors must (1) classify the parties' assets and liabilities as separate or marital, (2) determine the value of the property, and (3) divide the marital property equitably

FAMILY LAW - DIVORCE - ALIMONY - Alimony is considered only after the marital property has been equitably divided and the chancellor determines one spouse has suffered a deficit

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

FAMILY LAW - DIVORCE - ATTORNEY'S FEES - Determining whether to award attorney's fees in a divorce action is a matter largely entrusted to the discretion of the chancellor

FACTS

Don and Melanie Warner were married in 1984. After exchanging counterclaims and motions, Melanie filed a petition for citation of contempt in August 2020 because Don failed to comply with a court order to pay certain expenses. The next month, the two consented to divorce on the grounds of irreconcilable differences. A trial was held to determine the classification, valuation, and distribution of property, alimony, and attorney's fees. The chancellor noted that the total value of property that Melanie received was \$21,884.87, and the total value of property that Don received was \$59,060.65, and therefore, Melanie would receive a rounded-down \$37,000 less in property value. The chancellor ordered the parties to put the marital residence on the market immediately with Don paying all costs associated with the residence until the time it sold, at which time Melanie would receive the first \$37,000 and Don would be reimbursed for all costs. The remaining proceeds were to be divided with Melanie receiving 75% and Don receiving 25%. The judge then ordered Don to pay \$1,000 per month in alimony until Melanie vacated the residence and \$3,500 per month in permanent alimony. The chancellor held Don in contempt for failing to comply with the temporary order and awarded Melanie \$11,103.15. Finally, the chancellor awarded Melanie \$1,500 in attorney's fees for the contempt action and \$19,071.75 for the divorce action. Don appealed.

ISSUES

Whether the chancery court erred in (1) classifying, valuing, and distributing the marital property; (2) awarding alimony to Melanie; (3) finding Don to be in contempt for failing to pay certain expenses; and (4) awarding attorney's fees to Melanie.

HOLDING

(1) Because Melanie presented adequate evidence at trial that all items in question were separate property, that some items were misvalued, and the chancellor did not properly divide the property, the chancery court erred in distributing the marital property. (2) Because the chancery court did not consider the parties' nonmarital assets in assessing distribution and continuance of support, because the chancery court did not consider the debts assigned to Don when deciding the issue of alimony, and because the court improperly imputed additional income to Don when calculating alimony, the chancery court erred in awarding alimony. (3) Because the specific obligations that Don was required to pay and for which he was held in contempt for not paying were not complete within the judgment and because the orders were vague and confusing enough to justify Don's attempts to clarify them, the chancery court erred in finding Don to be in contempt for failing to pay certain expenses. (4) Because the finding of contempt was reversed and because Melanie did not prevail on appeal, the awards of attorney's fees were reversed. Therefore, the Court of Appeals reversed and rendered in part and reversed and remanded in part the judgment of the Desoto County Chancery Court.

Reversed & Rendered in Part; Reversed & Remanded in Part - 2020-CA-01098-COA (June 7, 2022)

Opinion by Judge Greenlee

Hon. Vicki B. Daniels (Desoto County Chancery Court)

Charles E. Winfield & Ashlyn Brown Matthews for Appellant - A.E. (Rusty) Harlow Jr. & Kathi Crestman Wilson for Appellee

Briefed by [Channing Curtis](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

ELLIS V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - APPEALS - TIME REQUIREMENTS - The Court of Appeals may suspend the time requirements of Miss. R. App. P. 4(a) to allow an out-of-time appeal in criminal cases and civil actions for post-conviction relief

POST-CONVICTION RELIEF - PROCEDURE - RESPONSE FROM STATE - When the Supreme Court's order granting a petitioner permission to proceed with PCR claims in a trial court is the finding of a prima facie case, the trial court should request that the State respond to the motion and, pursuant to Miss. Code Ann. § 99-39-19, the trial court must examine the record and determine whether an evidentiary hearing is required

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - THREE-YEAR BAR - Pursuant to Miss. Code Ann. § 99-39-5(2), a motion for post-conviction relief shall be made within three years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court or, in case no appeal is taken, within three years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three years after entry of the judgment of conviction

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS - Fundamental-rights exceptions have been expressly found to survive procedural bars; there must at least appear to be some basis for the truth of the fundamental-rights claim before the procedural bar will be waived

FACTS

In 2011, Thomas Earl Ellis was tried and convicted of both sexual battery and gratification of lust. The trial court sentenced Ellis as a habitual offender to serve forty-five years in prison, thirty years for sexual battery, and fifteen years for gratification of lust. Upon appeal, the Court of Appeals affirmed his convictions and sentences. In 2014, Ellis filed an application in the Supreme Court for leave to proceed and file a post-conviction relief ("PCR") motion in the trial court. Ellis asserted that he was entitled to PCR based upon Confrontation Clause violations, ineffective assistance of trial counsel, a spousal privilege violation, due process violations, comments on his post-*Miranda* silence at trial,

publication of the victim's recorded out-of-court interview to the jury, the absence of DNA testing or a rape kit, an illegal sentence, and newly discovered evidence. A three-justice panel denied Ellis's application for leave to proceed in trial court, finding that Ellis's claims regarding due process violations, comments on his post-*Miranda* silence, and publication of the victim's recorded out-of-court interview to the jury were raised and rejected at trial or on direct appeal and thus barred by res judicata. The Supreme Court also found that Ellis's claims of Confrontation Clause violations, violation of spousal privilege, and the absence of DNA testing or a rape kit were waived and lacked an arguable basis and that Ellis failed to meet the requisite prongs of deficient performance and prejudice for an ineffective assistance of counsel claim. The Supreme Court further held that Ellis lacked an arguable basis for his claims of an illegal sentence and newly discovered evidence. In April 2019, Ellis filed another PCR motion seeking relief on three claims: an illegal sentence based on the use of his 1991 conviction for habitual-offender-enhancement purposes, general errors before and during trial and sentencing, and ineffective assistance of trial counsel, appellate counsel, or both. Ellis also requested that the Supreme Court compel the State to file an answer to Ellis's PCR motion or, in the alternative, to direct the trial court to hold an evidentiary hearing. A three-justice panel treated Ellis's PCR motion as an application for leave to proceed in the trial court and dismissed Ellis's illegal sentence claim without prejudice because the trial court had exclusive, original jurisdiction to hear that claim. The panel also denied Ellis's other claims as time-barred and/or waived. In October 2019, Ellis filed a PCR motion in the trial court, raising the following claims: an illegal sentence based on his 1991 conviction used for habitual-offender-enhancement purposes, a defective indictment, Confrontation Clause violations, ineffective assistance of counsel, various due process violations, and improper publication of the victim's out-of-court interview to the jury. In June 2020, the trial court entered an order denying Ellis's PCR motion, finding that Ellis's PCR motion was time-barred and procedurally barred because Ellis improperly raised issues that could have been presented at trial or on direct appeal. Ellis appealed.

ISSUES

Whether (1) appellate jurisdiction was proper; (2) the trial court should have ordered a response from the State to Ellis's PCR petition; and (3) Ellis's PCR motion was time-barred.

HOLDING

(1) Because Ellis's appeal arose from a civil action for PCR and because Ellis did not receive the trial court's order denying his PCR motion until more than thirty days after the trial court entered the order, jurisdiction was proper and within the court's discretion. (2) Because the Supreme Court did not grant Ellis leave to proceed in the trial court on his illegal sentence claim, the trial court was not required to order a response from the State to Ellis's PCR petition. (3) Because Ellis's PCR motion was filed more than eight years after his 2011 conviction and nearly three decades after his 1991 conviction, and because Ellis failed to raise any claims of deprivation of his fundamental rights that would survive procedural bars, Ellis's PCR motion was time-barred. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2020-CP-00770-COA (June 7, 2022)

Opinion by Presiding Judge Carlton

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

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

Briefed by [Cade Perry Barlow](#)

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READON V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - ADEQUACY OF REPRESENTATION - PLEA COLLOQUY - A defendant's declarations during the plea colloquy that he was satisfied with the services of his lawyer are presumptively true and solemn declarations in open court carry a strong presumption of verity

CRIMINAL PROCEDURE - GUILTY PLEAS - VOLUNTARY CHARACTER - In order to be valid, a guilty plea must be entered voluntarily and intelligently, meaning that the defendant is advised concerning the nature of the charge against him and the consequences of the plea

CRIMINAL PROCEDURE - PROCEDURAL BARS - CONSTITUTIONAL ERROR - Merely asserting a constitutional-right violation is insufficient to overcome the procedural bars; there must at least appear to be some basis for the truth of the claim of a fundamental-constitutional-rights violation

CRIMINAL PROCEDURE - GUILTY PLEAS - WAIVER OF DEFENSES - A valid guilty plea operates as a waiver of all non-jurisdictional rights or defects that are incident to trial

CRIMINAL PROCEDURE - APPEALS - REPLY BRIEFS - It is a well-established rule that issues raised for the first time in an appellant's reply brief will not be considered, and to countenance this would deprive an appellee of the opportunity to respond to the argument

FACTS

Matthew Reardon waived his right to an indictment and pled guilty to aggravated stalking in July 2017. As part of his sentence, Reardon was to have a suspended sentence on post-release supervision ("PRS"). Reardon was banished from Lafayette County, aside from certain chancery court proceedings, as a special condition of his PRS. In 2020, Reardon filed a post-conviction relief ("PCR") motion asserting that his First, Eighth, and Fourteenth Amendment rights were violated by the State and that he received inadequate assistance of counsel. Reardon's motion was dismissed by the circuit court. After the dismissal of his first PCR motion, Reardon filed for a rehearing before a different circuit court judge, a motion for recusal, and a motion to compel evidence. The circuit court denied Reardon's motion for rehearing and, as a consequence, his motion to compel evidence was found moot and his motion for recusal was denied. Reardon appealed.

ISSUES

Whether (1) Reardon received ineffective assistance of counsel when he was coerced to plead guilty; (2) Reardon involuntarily pled guilty; (3) Reardon's Eighth Amendment rights were violated by the special condition of his PRS banishing him from Lafayette County and a civil liability covenant not to sue certain governmental agencies, the City of Oxford, Lafayette County, and the victims; (4) Reardon was denied due process due to the alleged delay or denial of his initial appearance or preliminary hearing, the receipt of excessive bail, and denial of the right to present exculpatory evidence; and (5) the circuit court erred in denying Reardon's motion to recuse.

HOLDING

(1) Because Reardon declared under oath that he was satisfied with the advice and assistance of his counsel and because he only offered his affidavit as the basis of his allegations, the circuit court did not err in finding that Reardon's ineffective-assistance claim was without merit. (2) Because Reardon was advised concerning the nature of the charge against him and the consequences of the plea and because the record contradicts his involuntary-guilty-plea claims, the circuit court did not abuse its discretion in finding that Reardon knowingly, intelligently, and voluntarily pled guilty. (3) Because Reardon vaguely asserted that the conditions were evidence of foul play, and because he offered no argument or any legal authority in support of the assertions, the issues were waived and insufficient to overcome any procedural bar. (4) Because entry of a valid guilty plea waived all non-jurisdictional rights or defects, Reardon's due process, excessive bail, and newly discovered evidence claims failed. (5) Because Reardon failed to address the recusal issue in his appellate brief, because he did not attempt to address the recusal issue until his reply brief, and because the record does not support any corrupt involvement otherwise, the recusal issue was waived and entirely without merit. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Circuit Court.

Affirmed - 2020-CP-01259-COA (June 7, 2022)

Opinion by Presiding Judge Carlton

Hon. John Kelly Luther (Lafayette County Circuit Court)

Pro se for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Elise Tucker](#)

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COURT OF APPEALS - CRIMINAL CASES

CARSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice

CONSTITUTIONAL LAW - ILLEGAL SEARCH & SEIZURE - CHALLENGE - A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed, and only defendants whose Fourth Amendment rights have been violated may benefit from the rule's protections

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense

CRIMINAL PROCEDURE - JURY DELIBERATIONS - INSTRUCTIONS - A trial judge confronted by a hung jury has two options if the judge feels that there is a likelihood that the jury will reach a verdict; the judge may either return the jury for further deliberations or may give an approved instruction reminding the jurors of their purpose and duty

FACTS

Phillip Carson was arrested by the Vicksburg Police Department after he failed to yield to blue lights and sirens during a traffic stop. While in pursuit of Carson, Officer Heggins and Officer Grady observed Carson throw an object out of the window of his SUV. After Carson was in custody, one of the officers found a plastic bag of crack cocaine in the area where Carson had thrown the object. The officers also found a plastic bag of crack cocaine in the console of the SUV. At the time of the pursuit and arrest, Carson was the driver and only occupant of the vehicle; no one else was present in the vehicle. The Mississippi Forensics Laboratory later determined that the bag found on the street contained 13.825 grams of crack cocaine, and the bag in the console contained 0.298 grams of crack cocaine. Carson was indicted for possession of more than ten grams but less than thirty grams of cocaine. In addition, during Carson's trial, after the jurors had deliberated about three hours, they sent a note to the judge that stated, "Currently, we are at a stalemate, 8 to 4. Unable to come to a unanimous verdict." After discussing the issue in chambers with counsel, the judge gave the jury an instruction that tracked an approved instruction, regarding hung juries, almost verbatim. The jury then deliberated about forty-five more minutes before returning a verdict. Carson was convicted following his jury trial and the court sentenced him to a term of twenty years in the custody of the Department of Corrections, with ten years to serve, ten years suspended, and five years of post-release supervision. Carson filed a motion for judgment notwithstanding the verdict or a new trial, which was denied. Carson appealed.

ISSUES

Whether (1) there was insufficient evidence to support Carson's conviction; (2) the jury's verdict was against the overwhelming weight of the evidence such that the trial judge's denial of a new trial was erroneous; (3) the arresting officers' search of the Acadia violated the Fourth Amendment; (4) Carson's detention in the Warren County jail violated the Eighth Amendment's ban on cruel and unusual punishment; (5) Carson's rights under the Confrontation Clause were violated due to the arresting officers not wearing body cameras and their cars not being equipped with dash cameras; (6) the case against Carson hinged on "racial profiling;" (7) Carson's trial counsel provided ineffective assistance by not filing a motion to suppress; and (8) the trial court abused its discretion by giving the jury a specific instruction.

HOLDING

(1) Because a reasonable and fair-minded juror could have found the testimony presented to be incriminating beyond a reasonable doubt, the evidence was sufficient to sustain Carson's conviction. (2) Because the jury's verdict was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable

injustice, the trial judge did not abuse his discretion when he denied Carson’s motion for a new trial. (3) Because Carson failed to raise his Fourth Amendment issue at trial, the issue was waived on appeal. (4) Because there was sufficient evidence to support Carson’s conviction, his Eighth Amendment rights were not violated. (5) Because the Confrontation Clause does not require police officers or patrol cars to be equipped with cameras, and because all of the arresting officers testified and were subject to cross-examination, Carson’s argument was without merit. (6) Because there was no evidence to support the claim that the case against Carson hinges on “racial profiling,” this argument was without merit. (7) Because Carson’s stop and arrest and the search of the SUV were all legal, his trial counsel’s decision not to file a motion to suppress was not ineffective assistance of counsel. (8) Because the trial judge complied with an approved jury instruction, there was no error or abuse of discretion in his decision to give the instruction. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2021-KA-00436-COA (June 7, 2022)

Opinion by Presiding Judge Wilson

Hon. M. James Chaney Jr. (Warren County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Chatham M. DeProspo](#)

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SIMPSON V. STATE

CRIMINAL - FELONY

EVIDENCE - OBJECTIONS - PROCEDURAL BAR - A party who fails to make a contemporaneous objection at trial must rely on plain error to raise the issue on appeal, because it is otherwise procedurally barred

EVIDENCE - AUTHENTICATION - ADMISSION - Miss. R. Evid. 901 provides that the authentication requirement for an item of evidence is satisfied if the proponent produces evidence sufficient to support a finding that the item is what the proponent claims it is

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A party claiming ineffective assistance of counsel bears the burden of proving that: (1) counsel’s performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

FACTS

On June 5, 2018, Falonda Simpson and her adult daughter Davonda Washington were found dead on the kitchen floor of Walter Simpson’s home. Falonda and Davonda were both stabbed several times then doused in gasoline and lit on fire. A fire marshal determined that the fire was not started accidentally. At the scene of the crime, Simpson told Deputy Matt Holcomb that he left home a little after 3:00 p.m. that day to travel to a barber college in Grenada, driving Falonda’s car, and after speaking with an instructor, he returned home. Simpson stated that upon entering the house, he did not turn on the lights until after he stumbled when he then found the bodies of his wife and step-daughter. Investigator Russell Kirby obtained GPS coordinates from the GPS installed in Falonda’s car and created a map of the vehicle’s route on the day of the murders. Unlike Simpson’s statements, the GPS showed that the car and Simpson did not leave the house until 3:54 p.m. He traveled to a house in Winona, where he spent approximately fifty minutes. Officers obtained a warrant for the Winona home and found a burn pile that included blue jean pieces, a gas can top, and missing floor mats from Falonda’s vehicle. Kirby obtained a DNA sample from Simpson, Falonda, and Davonda which he sent to a biological laboratory along with pieces of evidence that contained blood, including a water bottle, a cigarette lighter, a seat controller, and the front seat on the driver’s side of Falonda’s vehicle. The lab technician determined that the blood on the water bottle belonged to Davonda, the blood on the seat controller and front driver’s seat belonged to Falonda, and the blood on the cigarette lighter, which officers believe started the fire, belonged to Simpson. At trial, Kathy Anderson, a pastor and friend to Falonda, and Octavia Kirkland, Davonda’s best friend, testified for the State. Kathy testified that Falonda met with her regarding church business around noon on June 5, 2018, while Octavia and Davonda were communicating on FaceTime. Octavia testified that Davonda told her she had been at home alone with

Simpson when he groped her and exposed himself to her. While Facetimeing Octavia, Davonda tried to leave the home to tell her mother about the incident when Simpson grabbed her arm. Octavia and Davonda exchanged several text messages regarding the outcome of Davonda's disclosure to Falonda. After failing to get in touch with Falonda, Simpson contacted Kathy in search of Falonda. Kathy received a text message from Falonda explaining that Simpson had touched her daughter and that Davonda had been waiting for Falonda by the highway. Falonda's friend Marcella Head testified that Falonda had called her around 3:30 p.m., and she heard Falonda scream before she lost contact with her. Shortly after he got home, Simpson called his brother-in-law and Kathy to inform them of Falonda's and Davonda's deaths. At trial, the text messages between Octavia and Davonda were admitted into evidence. The jury convicted Simpson of two counts of first-degree murder, one count of first-degree arson, and one count of being a felon in possession of a deadly weapon. Simpson appealed.

ISSUES

Whether (1) the circuit court plainly erred by admitting text messages purportedly sent from Davonda to Octavia and (2) Simpson's counsel was constitutionally ineffective for failing to object to the admission of the allegedly improperly authenticated text messages.

HOLDING

(1) Because there was no violation of a legal rule that could be considered plain, clear, or obvious and was prejudicial on the result of the trial, the circuit court did not plainly err by admitting text messages purportedly sent from Davonda to Octavia. (2) Because the Court of Appeals found that the evidence was properly authenticated and there was no error in its admission, Simpson's trial counsel did not provide ineffective assistance by not objecting to the admission of the text messages. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2021-KA-00075-COA (June 7, 2022)

Opinion by Judge Greenlee

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

Zakia Helen Annyce Butler (Pub. Def. Office) for Appellant - Candice Leigh Rucker (Att'y Gen. Office) for Appellee

Briefed by [Meagan Guyse](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 2, 2022

COURT OF APPEALS - CIVIL CASES

THOMAS V. BOYD BILOXI LLC

CIVIL - PERSONAL INJURY

TORTS - PREMISES LIABILITY - RECOVERY - In order for an invitee to recover in a slip-and-fall case, the invitee must (1) show that some negligent act of the defendant caused his injury; or (2) show that the defendant had actual knowledge of a dangerous condition and failed to warn the plaintiff; or (3) show that the dangerous condition existed for a sufficient amount of time to impute constructive knowledge to the defendant, in that the defendant should have known of the dangerous condition

TORTS - CIRCUMSTANTIAL EVIDENCE - INFERENCE OF NEGLIGENCE - While inferences of negligence may be drawn from circumstantial evidence, those inferences must be the only ones that reasonably could be drawn from the evidence presented

CIVIL PROCEDURE - ISSUES ON APPEAL - PROCEDURAL BAR - An appellate court will not consider issues raised for the first time in an appellant's reply brief, as those issues are procedurally barred

FACTS

On July 14, 2016, Charlene Thomas checked into the IP Casino Resort, a hotel owned by Boyd Biloxi, with her sister and nephew. After checking in, the group went to the pool area where Thomas subsequently fell, sustaining injuries to her legs, back, and spine. Thomas filed a complaint against Boyd Biloxi alleging that her injuries were the result of its negligence. After her complaint was transferred, Thomas filed an amended complaint. Boyd Biloxi filed an answer and a motion for summary judgment. Thomas then filed a “Response in Opposition to Defendant’s Motion for Summary Judgment,” seeking a continuance on Boyd Biloxi’s motion for summary judgment pursuant to Miss. R. Civ. P. 56(f). Before the hearings took place, Thomas filed an amended response to Boyd Biloxi’s summary judgment motion and an amended motion for a continuance pursuant to Miss. R. Civ. P. 56(f), both of which were filed through new counsel. The trial court granted in part and denied in part Thomas’s Miss. R. Civ. P. 56(f) motion. Two months later, the trial court granted summary judgment in favor of Boyd Biloxi. Thomas appealed.

ISSUES

Whether the trial court erred in (1) granting summary judgment in favor of Boyd Biloxi; and (2) denying in part Thomas’s Miss. R. Civ. P. 56(f) motion to deny or defer ruling on Boyd Biloxi’s motion for summary judgment.

HOLDING

(1) Because Thomas did not know why she fell, and as such, failed to produce sufficient circumstantial evidence to show that the only inference that could be drawn from the evidence was that the fall was caused by the negligence of Boyd Biloxi, the court correctly granted summary judgment in favor of Boyd Biloxi. (2) Because Thomas did not separately address the court’s ruling on her Miss. R. Civ. P. 56(f) motion in her initial brief on appeal and because Thomas did not seek written discovery within the discovery period, the trial court did not err in denying in part her Miss. R. Civ. P. 56(f) motion, and further, it was procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Judge Westbrook argued that the majority improperly placed itself in the role of fact-finder. She argued that the conflicting perceptions and testimony surrounding Thomas’s fall showed that there were genuine issues of material fact and that the majority incorrectly granted summary judgment through speculative inferences, which was contradictory to the rule that at the summary judgment phase, the trial court must view the evidence in the light most favorable to the non-movant. Additionally, she argued that the denial in part of Thomas’s Miss. R. Civ. P. 56(f) motion was improper because the rule on discovery regarding Thomas’s lack of timeliness for her written requests was not necessarily dispositive.

Affirmed - 2021-CA-00265-COA (June 2, 2022)

En Banc Opinion by Judge Emfinger - Dissent by Judge Westbrook

Hon. Lisa P. Dodson (Harrison County Circuit Court, Second Judicial Dist.)

David Wayne Baria & Eugene John Hoffman IV for Appellant - Patrick R. Buchanan for Appellees

Briefed by [Mariel Soehner](#)

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