

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 16, 2022**SUPREME COURT - CIVIL CASES****CATH. DIOCESE OF JACKSON V. DE LANGE****CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE****CONSTITUTIONAL LAW - FIRST AMENDMENT - ECCLESIASTICAL ABSTENTION DOCTRINE -**

When ecclesiastical questions are presented to a legal tribunal, it must abstain from resolving those questions and defer to that religious entity's highest authority

CONSTITUTIONAL LAW - FIRST AMENDMENT - ECCLESIASTICAL ABSTENTION DOCTRINE -

Matters of polity, including employment decisions, are not subject to review by a legal tribunal when reviewing that decision would require interpretation of the church's rules, laws, or customs

CONSTITUTIONAL LAW - FIRST AMENDMENT - ECCLESIASTICAL ABSTENTION DOCTRINE -

The Ecclesiastical Abstention Doctrine does not apply in cases of child molestation because child abuse laws are neutral, generally applicable laws and child abuse is not considered to be an ecclesiastical matter

FACTS

Arie Mattheus de Lange was appointed to be the finance officer of the Catholic Diocese of Jackson ("Diocese"). The terms of his employment were established by the Code of Canon Law of the Roman Catholic Church. Canon 494 set out five-year terms and stated that during a five-year term, the finance officer was not to be removed for any reason except for a grave cause. De Lange was later terminated due to the Diocese's weakened financial condition, internal problems shown in audit reports, an unexpected deficit of \$900,000, and a lack of leadership, communication, and collaboration. De Lange filed suit arguing the reasons cited for his termination were not considered grave causes. The Diocese and bishop filed a motion to dismiss for lack of subject-matter jurisdiction arguing that the circuit court was precluded from deciding the case because the dispute is an ecclesiastical matter. The motion was denied. The Diocese appealed.

ISSUES

Whether (1) the ecclesiastical abstention doctrine under the First Amendment deprived the circuit court of subject-matter jurisdiction and (2) the circuit court erred by finding it had subject-matter jurisdiction pursuant to a previous case involving the Diocese.

HOLDING

(1) Because ruling on De Lange's termination would have ultimately required interpreting the meaning of a "grave cause" in the Code of Canon Law, because for De Lange's defamation claim, a court would ultimately be required to determine whether grave cause existed for De Lange's termination and such a determination would require an impermissible interpretation by a civil court of the Diocese's Code of Canon Law, and because De Lange's claim involving negligent and intentional infliction of emotional distress would have required the same impermissible interpretation of the Code of Canon Law, the circuit court erred by denying the Diocese's motion to dismiss for lack of subject-matter jurisdiction. (2) Because employment decisions were regarded as an ecclesiastical matter, unlike the child molestation at issue in a previous case involving the Diocese, the circuit court erred by finding it had subject-matter jurisdiction pursuant to previous case law. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

Reversed & Rendered - 2021-IA-00159-SCT (June 16, 2022)

En Banc Opinion by Justice Chamberlin
Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court)
R. Richard Cirilli Jr. & Stephen J. Carmody for Appellants - H. Wesley Williams III for Appellee
Briefed by [Christian Eaves](#)

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CITY OF GULFPORT V. COWAN ROAD & HWY 90, LLC

CIVIL - REAL PROPERTY

REAL PROPERTY - GOVERNMENT USE - ATTORNEY'S FEES - Pursuant to Miss. Code Ann. § 43-37-9, the owner of any right, title, or interest in real property that is used by the government in any program or project in which federal or federal-aid funds are used may request that the court award its attorney, appraisal, and engineering fees
CIVIL PROCEDURE - AWARDS - ATTORNEY'S FEES - When determining the reasonableness of an attorney's fees, the court looks at the following factors: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent

CIVIL PROCEDURE - AWARDS - ATTORNEY'S FEES - The trial court has the discretion to reduce the hourly rate of attorney's fees if it believes it to be required

CIVIL PROCEDURE - AWARDS - PREJUDGMENT INTEREST - Pursuant to Miss. Code Ann. § 75-17-7, the trial judge is not required to award prejudgment interest, but is allowed to determine the date from which interest will be calculated, which may be the date of judgment

CIVIL PROCEDURE - AWARDS - PREJUDGMENT INTEREST - Prejudgment interest is not allowed unless the claim is liquidated; if there is a bona fide dispute as to the amount of damages as well as the responsibility and liability therefore, prejudgment interest is not an available award

CIVIL PROCEDURE - AWARDS - POSTJUDGMENT INTEREST - Pursuant to Miss. Code Ann. § 75-17-7, postjudgment interest is a statutory right because public policy is heavily in favor of postjudgment interest; the trial court does not have the discretion to deny the award of postjudgment interest on attorney's fees, only the discretion to determine the amount and the date from which to allow them

FACTS

In 2008, the City of Gulfport undertook a project to replace its sewage and water infrastructure after the extensive destruction caused by Hurricane Katrina. The repair project involved federal, state, and local agencies and ultimately cost eighty-five million dollars to complete. Most of the project was financed by FEMA funds. The project was divided into several different areas, one of which was identified as "Area 3B." Cowan Road and Hwy 90, LLC ("Cowan Road") owned a portion of land within Area 3B, and PriorityOne Bank ("PriorityOne") held the deed of trust for the property. Cowan Road had entered into a participation agreement with one of its neighbors, John Felsher, to aid in the marketability of their adjoining properties. Felsher approached the senior project manager assigned to Area 3B and requested that the sewage lines scheduled to be placed over the Cowan Road property be relocated. The parties agreed and the Area 3B drawings were redrafted to accommodate Felsher's request. However, existing underground telephone lines were discovered that prevented the sewage line from being installed perpendicular to the northern border of Cowan Road, requiring instead that they be angled to the southwest, thereby cutting across 0.616 acres of the Cowan Road property. In 2011, Cowan Road filed a complaint for reverse condemnation against the City of Gulfport in the Chancery Court of Harrison County. The case was transferred to the Harrison County Circuit Court. The parties eventually settled the reverse condemnation claim but reserved all claims, rights, and defenses on the issue of fees and expenses. In 2019, the trial court ruled on the motion for partial summary judgment filed by the City of Gulfport on the issue of attorney's fees, finding that the Cowan Road property was part of the Area 3B project and authorizing an award of attorney's fees.

Later in 2019, Cowan Road filed its application for an award of attorney’s fees and expenses, seeking \$371,097.37. Of that amount, \$321,800 was for attorney’s fees. In 2020, the trial court entered an order for attorney’s fees, finding that the hourly rate requested by the law firm of \$400 was excessive and that \$300 would be more appropriate. Additionally, it reduced the total amount of the time billed for mediation and removed all fees and costs associated with the mediation. In total, the trial court awarded \$234,750 to Cowan Road in attorney’s fees and \$87,542.03 to PriorityOne. The City of Gulfport appealed and Cowan Road and PriorityOne cross-appealed.

ISSUES

Whether (1) Cowan Road and PriorityOne were entitled to recover attorney’s fees and expenses from the City of Gulfport under Miss. Code Ann. § 43-37-9; (2) the attorney’s fees, expenses, and costs incurred were related to the case or were reasonable; (3) the trial court erred by reducing the attorney’s fees from \$321,800 based on an hourly rate of \$400 to \$234,750 based on an hourly rate of \$300; and (4) the trial court erred by denying the Motion for Award of Interest for Final Judgment Interest on the Attorney’s Fees and Expenses Awarded.

HOLDING

(1) Because the sewage line laid across the Cowan Road property was part of a much larger project that was financed mostly by federal money, and because Miss. Code Ann. § 43-37-9 allowed for the recovery of attorney’s fees in a reverse condemnation proceeding if federal funds were used for the program or project, and because Cowan Road owned the property at issue and PriorityOne held the deed of trust to the property, both parties were entitled to recover attorney’s fees and expenses. (2) Because the \$300 hourly rate the trial court imposed for Cowan Road’s attorneys was not egregiously higher than customarily charged rates on the Gulf Coast for involvement with government entities, and because billing by the quarter hour instead of the tenths of an hour was neither uncommon nor unreasonable, and because the fee charged by Cowan Road’s attorneys was meant as an umbrella rate to cover all work done by the lead attorney, his associate attorneys, and his paralegal, the fees, costs, and expenses incurred by Cowan Road were reasonable, and the fees, costs, and expenses incurred by PriorityOne were reasonable. (3) Because the trial court had the discretion to reduce the hourly rate of attorney’s fees if it believed it to be required, and because the reduction amply remedied any sort of billing discrepancies or the hourly rate being higher than customary, the trial court did not err by reducing the attorney’s fees awarded to Cowan Road. (4) Because Miss. Code Ann. § 75-17-7 allowed the trial judge to determine the date from which interest would be calculated, and because the amount in controversy was disputed throughout the case by the parties and therefore was not a liquidated amount, the trial court did not err by denying the motion for prejudgment interest; however, because postjudgment interest was a statutory right under Miss. Code Ann. § 75-17-7, and because the trial court did not have the discretion to determine whether to award postjudgment interest but only the amount and date from which to allow it, the trial court erred by denying the motion for award of postjudgment interest. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court on direct appeal and affirmed in part, reversed in part, and remanded the judgment of the Harrison County Circuit Court on cross-appeal.

On Direct Appeal: Affirmed. On Cross Appeal: Affirmed in Part; Reversed in Part & Remanded - 2020-CA-01286-SCT (June 16, 2022)

Opinion by Justice Coleman

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court)

William E. Whitfield III, Jeffrey S. Bruni, & Kaara Lena Lind for Appellant - Joe Sam Owen & Derek Andrew Henderson for Appellees

Briefed by [Morgan Arrington Jones](#)

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CIVIL - LEGAL MALPRACTICE

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - LEGAL MALPRACTICE - An attorney's failure to file an action within the prescribed statute of limitations is negligence as a matter of law

CIVIL PROCEDURE - NEGLIGENCE - DAMAGES - Negligence is actionable only where it is the proximate cause of the damages complained of, which are usually the value of the claim lost or judgment suffered as an alleged result of the attorney's negligence

FACTS

While driving a forklift, Lori Chandler was hit by another forklift and injured. She retained Turner & Associates to file a workers' compensation claim, but they failed to file her claim within the statute of limitations. The firm's case manager also engaged in a year-and-a-half-long cover-up, which included false assurances of settlement negotiations, fake settlement offers, and a forged settlement letter purporting to be from Chandler's former employer. Chandler filed suit against the firm for legal malpractice. The only issue at trial was damages. The trial judge, as fact-finder, found that Chandler had suffered a compensable injury that caused her to lose her job and left her unemployed for two years. Based on her hourly wage, the judge determined that had the claim been timely filed, Chandler could have reasonably recovered \$50,000 in disability benefits. So, the trial judge awarded her \$50,000 in compensatory damages and \$100,000 in punitive damages against the case manager due to her egregious conduct. The Court of Appeals affirmed the punitive damage award but reversed and remanded the compensatory damage award because Chandler failed to present sufficient medical evidence to support a \$50,000 workers' compensation claim. Chandler petitioned for writ of certiorari.

ISSUE

Whether the trial court reversibly erred by awarding \$50,000 in compensatory damages because Chandler failed to support her damages claim with substantial evidence.

HOLDING

Because, due to her attorneys' negligence, Chandler lost her ability not only to file but also to prove her disability claim and because the trial judge applied the correct legal standard and supported his compensatory-damages award with substantial evidence, the Court of Appeals erred in reversing the trial court's compensatory damages award of \$50,000. Therefore, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and reinstated and affirmed in part and reversed in part the judgment of the Clay County Circuit Court, and remanded the case.

DISSENT

Justice Coleman agreed with the majority that the case sounded in legal negligence rather than workers' compensation. However, he dissented on the issue of compensatory damages. He argued because Chandler failed to produce sufficient evidence that her underlying workers' compensation claim had value, as required by workers' compensation law, the Court of Appeals correctly reversed the trial court's award of compensatory damages.

The Judgement of the Court of Appeals is Affirmed in Part & Reversed in Part. The Judgment of the Clay County Circuit Court is Reinstated and Affirmed in Part & Reversed in Part & the Case is Remanded - 2019-CT-01423-SCT (June 16, 2022)

En Banc Opinion by Justice Maxwell - Dissent by Justice Coleman

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

Randolph Walker, Angela Turner Ford, & Barbara Lee Clark for Appellants - Charles M. Merkel Jr., Edward P. Connell Jr., Robert Alexander Carson III, John H. Cocke, & Corrie Schuler for Appellee

Briefed by [J. Evan Thomas](#)

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SUPREME COURT - CRIMINAL CASES

EUBANKS V. STATE

CRIMINAL - MISDEMEANOR

CRIMINAL PROCEDURE - SPEEDY TRIAL - CONSTITUTIONAL FACTORS - Four factors that must be considered and weighed for a violation of a defendant's constitutional right to a speedy trial are: (1) the length of delay; (2) the reason for delay; (3) whether the defendant timely asserted his right; and (4) whether the defendant was prejudiced by the delay

CRIMINAL PROCEDURE - SPEEDY TRIAL - TIMING - Under Miss. Code Ann. § 99-17-1, unless good cause can be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than 270 days after the accused has been arraigned

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PROOF - To prove ineffective assistance of counsel, the defendant must show (1) the counsel's performance was deficient, and (2) that the deficiency prejudiced the defense

CRIMINAL PROCEDURE - SUFFICIENCY OF EVIDENCE - CHALLENGE - When reviewing a challenge for sufficiency of the evidence, the determination is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF EVIDENCE - A motion for new trial must be made where it is contended that the jury is against the overwhelming weight of the evidence

CRIMINAL PROCEDURE - WITHHOLDING EVIDENCE - BRADY VIOLATION - To establish a *Brady* violation a defendant must prove the following: (1) that the government possessed evidence favorable to the defendant (including impeachment evidence); (2) that the defendant does not possess the evidence nor could he obtain it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE - A lesser-included offense is one in which all the essential ingredients are contained in the offense for which the accused is indicted

FACTS

On February 15, 2017, Shakera Harris filed domestic violence charges against Joseph Eubanks. Harris contended that Eubanks made it hard for her to breathe by choking her. Harris received treatment at Baptist Memorial Hospital in Oxford, and Eubanks was arrested and released on bond. In June 2017, Eubanks was indicted for aggravated domestic violence. In 2020, Eubanks was convicted of simple assault domestic violence. Subsequently, Eubanks was sentenced to six months in the custody of the Mississippi Department of Corrections ("MDOC") with six months suspended and 364 days of unsupervised probation. Eubanks appealed.

ISSUES

Whether (1) Eubanks's right to a speedy trial was violated; (2) the trial court erred by overruling defense counsel's objection to a nurse practitioner's testimony; (3) Eubanks received ineffective assistance of counsel; (4) the trial court erred by denying Eubanks's motion for judgment of acquittal notwithstanding the verdict; (5) the jury's finding that Harris suffered bodily harm was against the overwhelming weight of the evidence; (6) the State violated Eubanks's due process rights; and (7) the trial court erred by giving the State's simple assault domestic violence jury instruction.

HOLDING

(1) Because Eubanks waited a significant amount of time to assert his right to a speedy trial, and because Eubanks was minimally prejudiced by the delay of trial, and because Eubanks did not experience oppressive pretrial incarceration, Eubanks's constitutional and statutory right to a speedy trial was not violated. (2) Because Eubanks's defense counsel failed to object to the opinion testimony during direct examination, Eubanks waived the issue on appeal. (3) Because Eubanks failed to show that his trial attorney's performance was deficient and prejudiced his defense, Eubanks's ineffective assistance of counsel claim failed. (4) Because the jury heard testimony from both Harris and Eubanks regarding their different versions of events, and because Eubanks's defense counsel cross-examined Harris regarding

her statements to law enforcement, the trial court did not err by denying Eubanks's motion for judgment of acquittal notwithstanding the verdict. (5) Because the jury heard all evidence and testimony and was presented with both the State's and Eubanks's theory of the case, a reasonable juror could have found Eubanks guilty of simple assault domestic violence. (6) Because no evidence was provided to suggest that the State possessed and suppressed evidence favorable to Eubanks, and because Eubanks actually possessed the evidence, and because there was no indication that the outcome of the proceedings would have been different had the evidence been disclosed, and because Eubanks testified to tell the jury his side of the story, Eubanks's due process rights were not violated pursuant to *Brady*. (7) Because the jury could have found that Eubanks's actions fell short of strangulation but did cause Harris bodily harm in weighing the evidence presented, the trial court did not err by giving the State's simple assault domestic violence jury instruction. Therefore, the Supreme Court affirmed the judgment of the Lafayette County Circuit Court.

DISSENT

Justice Coleman argued Eubanks's Sixth Amendment right to a speedy trial was violated. He argued first that the length of delay between Eubanks's arrest and his trial was presumptively prejudicial and weighted in favor of Eubanks in the analysis. Next, Justice Coleman argued that the State failed to provide sufficient reasoning for the delay of Eubanks's trial. Further, Justice Coleman argued that Eubanks's failure to timely assert his right to a speedy trial should not have been weighed against him in a higher degree. Finally, Justice Coleman argued that the prejudice factor should also have weighed in Eubanks's favor because of the stress and anxiety caused by the long delay and because his defense was impaired by the delay.

Affirmed - 2020-KM-00110-SCT (June 16, 2022)

En Banc Opinion by Justice Griffis - Dissent by Justice Coleman

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

Pro se for Appellant - Ashley Lauren Sulser, William M. Mallette, & Julie Howell Addison (Att'y Gen. Office) for Appellee

Briefed by [Chase Baker](#)

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RUSSELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - Miss. Code Ann. § 99-19-83 provides that every person convicted of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one year or more, and where any one of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation

CRIMINAL PROCEDURE - SENTENCING - PROPORTIONALITY - The U.S. Supreme Court held that a court should use a three-part analysis to determine the proportionality of a sentence by reviewing: (1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commission of the same crime in other jurisdictions; the defendant has the burden of presenting evidence for each factor to persuade the court that a sentence is disproportionate

FACTS

Officers went to Allen Russell's residence as part of a homicide investigation in which Russell had been named as a potential suspect after a medical document belonging to Russell was found at the scene. Upon arrival, officers obtained a warrant to search the address and found Russell hiding in his attic. Officers also found a pair of jeans containing five bags of marijuana. A forensic analysis confirmed that the combined weight of two bags was 43.71 grams but declined to weigh the remaining three bags because the statutory requirement to charge Russell with possession of marijuana had been satisfied. Russell was indicted for possessing more than thirty grams but less than 250 grams of marijuana. The indictment also charged Russell as a violent habitual offender because he pled guilty to two separate charges of burglary

of a dwelling and one charge of felon in possession of a firearm. Russell filed a motion to quash the indictment arguing that his Constitutional right against ex post facto laws was violated and that a sentence of life without parole constituted cruel and unusual punishment. At a hearing on Russell's motion to quash, he presented no witnesses or other evidence other than his argument. The trial court held that his motion should be addressed at sentencing and took the matter under advisement. At trial, the jury convicted Russell of possession of marijuana in an amount greater than thirty grams but less than 250 grams. At his sentencing hearing, the trial court heard additional argument related to the motion to quash and Russell again presented no witnesses or evidence other than his argument. The trial court then denied his motion to quash and subsequently the State presented evidence of Russell's prior felony convictions. At this point, Russell was given another opportunity to call witnesses or present any other evidence but chose not to do so. Based on Russell's prior felony convictions, the trial court found he was a violent habitual offender and sentenced him to life without eligibility for probation or parole. Russell then moved for a new trial, or alternatively, a judgment notwithstanding the verdict, challenging his sentence as cruel and unusual punishment. The trial court denied the motion. Russell appealed to the Court of Appeals again arguing that his sentence constituted cruel and unusual punishment. The Court of Appeals, in a split decision, affirmed the judgment of the trial court holding that his sentence as a habitual offender was not grossly disproportionate to the crime committed. Russell petitioned for a writ of certiorari.

ISSUE

Whether Russell's life sentence for possession of more than thirty grams but less than 250 grams of marijuana as a violent habitual offender constituted cruel and unusual punishment under the Eighth Amendment.

HOLDING

Because Russell was considered a violent habitual offender due to his prior felony convictions of burglary and felon in possession of a firearm, and because the trial judge did not have sentencing discretion and was required to sentence Russell to life without parole pursuant to Miss. Code Ann. § 99-19- 83, and because Russell never presented or attempted to present any evidence to establish that he was entitled to a sentence other than life without parole, Russell's sentence did not constitute cruel and unusual punishment. Therefore, the Supreme Court affirmed the judgment of the Forrest County Circuit Court.

SPECIAL CONCURRENCE

Chief Justice Randolph argued that the trial court was required to follow statutory law and thus was required pursuant to statutory law to sentence Russell to life without parole. He further argued that if the statute requiring a life sentence for habitual offenders was merely a suggestion, the legislature should amend the statute to reflect such.

DISSENT

Justice Coleman argued that, in light of the similarities between Russell's situation and the guidance in place for courts to consider the issue of disproportionate sentences, Russell's sentence should have been vacated and remanded for resentencing. In his view, the majority's decision was based on Russell's failure to offer evidence, not based on any material distinction in previous case law and Russell's situation. He further argued that the recent developments concerning marijuana possession arguably provide a material difference between prior cases and Russell that favors Russell as to the objective factors.

Affirmed - 2019-CT-01670-SCT (June 16, 2022)

En Banc Opinion by Justice Chamberlin - Concurrence by Chief Justice Randolph - Dissent by Justice Coleman

Hon. Robert B. Helfrich (Forrest County Circuit Court)

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

Briefed by [Dallas Martin](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 14, 2022

COURT OF APPEALS - CIVIL CASES

BRELAND V. TURNAGE

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - STANDING - REQUIREMENTS - A party possesses standing to sue if, at the time of the commencement of the suit, they have a colorable interest in the suit that is present and actionable or they are adversely affected by the defendant's conduct

REAL PROPERTY - TIMBER - RIGHTS OF REMAINDERMEN - When trees are cut down for profit, they become personal property in which the tenant in possession has no interest, and remaindermen may sue for the possession of wrongfully cut timber or the resulting damages to the inheritance

REAL PROPERTY - TIMBER - RIGHTS OF A LIFE TENANT - A life tenant can only harvest timber without the remaindermen's consent if doing so is necessary to pay the property taxes, provide timber for repairs on the property, or to properly manage or preserve the property

CIVIL PROCEDURE - APPELLATE REVIEW - NOTICE TO TRIAL COURT - A trial court cannot be in error for overruling an objection that is so broad that it fails to put the trial court on notice as to the alleged error

FACTS

Reserving a life estate in both parcels, Verdie Regan conveyed 34.75 acres of land to her grandchild Joseph Turnage and 34.75 acres to her grandchild Jason Breland. Regan subsequently entered into an agreement with Williamson and Son Logging LLC, after which the company began harvesting timber from all seventy acres of the land. Even after Turnage became aware of the agreement and asked the company to stop clear-cutting the property, the company continued to remove all of the land's timber. Breland was the sole recipient of the proceeds from the timber, and so Turnage filed suit against Breland. Prior to the trial, Turnage sold his 34.75 acres to his sister and her husband, selling it for less than he would have been able to if it had not been cleared. At trial, Breland challenged the chancery court's jurisdiction because Turnage failed to join the new owners of the land as parties to the suit. The chancellor overruled the challenge and also prohibited Breland from examining Turnage about a prior conviction. The chancellor ultimately ruled in Turnage's favor, ordering Breland to pay Turnage one-half of the timber money. Breland appealed.

ISSUES

Whether the chancellor erred (1) in overruling Breland's motion challenging jurisdiction; (2) in determining damages; and (3) by prohibiting Turnage's testimony concerning his prior conviction.

HOLDING

(1) Because Turnage owned the land at the time that he filed suit, held a vested remainder in the parcel that was clear-cut without his permission, was not paid any percentage of the profits therefrom, and sold the property for less than he would have been able to if the land had not been cleared, Turnage possessed proper standing to continue the lawsuit. (2) Because the only reasoning put forth as to why the timber was felled was that Regan wanted the land clear-cut and because Turnage held a vested remainder in half of the land, the chancellor did not err in awarding Turnage half of the proceeds from the timber, which was his personal property once cut. (3) Because Breland argued to the trial court that testimony concerning Turnage's past conviction should be admitted pursuant to Miss. R. Evid. 404(b) but argued on appeal that it should have been admitted to impeach Turnage's testimony concerning land values when he had not lived in the state for seven years due to the conviction, the trial court was not put on notice of the grounds for the objection on appeal and so was not in error. Therefore, the Court of Appeals affirmed the judgment of the Marion County Chancery Court.

Affirmed - 2021-CA-00698-COA (June 14, 2022)

Opinion by Judge Lawrence

Hon. Sheila Havard Smallwood (Marion County Chancery Court)

William L. Ducker for Appellant - Joseph Leonard Turney for Appellee

Briefed by [Katharine Van Pelt](#)

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TAYLOR V. MISS. DEP'T OF CHILD PROT. SERVS.

CIVIL - CUSTODY

YOUTH COURT - ADJUDICATION PROCEEDINGS - WAIVER OF NOTICE - Under Miss. Code Ann. § 43-21-507(2), a party, other than the child, waives service of summons on himself or herself by appearing at the hearing voluntarily

YOUTH COURT - REUNIFICATION - EXCEPTION - The court does not have to make reasonable efforts to maintain a child within his or her home if the court reasons that the effect of the continuation of the child's residence within his home would be contrary to the welfare of the child

YOUTH COURT - CUSTODY - DURABLE LEGAL CUSTODY - Under durable legal custody, the durable legal custodian has the responsibility and duty to care for the child, but the parent still has some form of residual rights and responsibilities

FACTS

Shayla Taylor had two children named Kevin and John. In March 2020, she had an argument with John's father, Jakahius Clark, who afterward received a video from Taylor of her brushing a knife against John's leg. Clark, who was out of state at the time of the incident, returned to get John. Clark told the Mississippi Department of Child Protection Services ("CPS") of the incident, and CPS removed John from Taylor's house. During John's shelter hearing later that month, CPS learned of Kevin, and shortly thereafter took Kevin into custody. At Kevin's shelter hearing the next day, CPS informed the youth court that they had placed Kevin with his paternal grandparents, while Taylor's attorney informed the youth court that Taylor was at a mental health facility for treatment. In addition, the guardian ad litem ("GAL") for Kevin told the youth court that it would be best for Kevin's safety for the court to issue an emergency custody order. The court issued the emergency order that removed physical and legal custody of Kevin from Taylor and Kevin's father and acknowledged Kevin as an alleged abused child that should not remain in his mother's home. The youth court also issued a shelter order and an order that reasonable efforts to reunify the family would be made. In April 2020, Lamar County filed a petition asking the youth court to hold a hearing to determine Kevin's best interest and welfare. In May 2020, the youth court held an adjudication hearing for both Kevin and John, at which both Taylor and Clark, after being informed of their right to contest adjudication, declined to do so, resulting in the youth court adjudicating both children as abused. At the disposition hearing the same day, CPS noted Kevin was doing well with his paternal grandparents, and recommended a permanent plan for reunification, noting Taylor's improvements in her mental health. However, the GAL, still having concerns regarding Taylor, recommended that Kevin stay with his grandmother. The youth court decided to bypass reunification and ordered a permanent plan of durable legal custody for Kevin. Despite objections from Taylor's attorney, the youth court entered a disposition order reflecting its bench ruling later that month. In June 2020, the youth court granted Kevin's paternal grandmother physical placement. Later in June 2020, the youth court held a permanency hearing to determine any necessary changes to the order. CPS reported that Kevin had a close bond with his paternal grandmother and was doing well. Taylor's attorney asked for reconsideration regarding the youth court's decision to bypass reunification, but the youth court declined, stating that Kevin staying with his grandmother was a safe alternative and in Kevin's best interest. The youth court also entered a permanency order so that CPS could finalize durable legal custody or legal guardianship permanency plans for Kevin. At a scheduled status permanency hearing in September 2020, it was noted that Taylor wanted to suspend visitation until further notice. CPS and the GAL recommended that the paternal grandparents be granted durable legal custody of Kevin, and the youth court entered an order granting durable legal custody to Kevin's paternal grandparents a few days later. Taylor appealed.

ISSUES

Whether the youth court (1) complied with Miss. Code Ann. § 43-21-557 and (2) erred in bypassing reunification.

HOLDING

(1) Because Taylor waived the service of summons requirement by voluntarily appearing at the hearing, and because the court records clearly showed the youth court explaining Taylor's rights to her, the youth court complied with Miss.

Code Ann. § 43-21-557. (2) Because Kevin was adjudicated as an abused child without contest from Taylor, because the court was not required to make reasonable efforts to reunify an adjudicated child with his or her family if it determined it was not in the best interest and welfare of the child, and because the court agreed with the GAL's concerns regarding reunifying Kevin with Taylor and thus granted durable legal custody to Kevin's grandparents, the youth court did not err in bypassing reunification. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Youth Court.

Affirmed - 2020-CA-01194-COA (June 14, 2022)

Opinion by Judge Lawrence

Hon. Brad Ashley Touchstone (Lamar County Youth Court)

Charles E. Lawrence Jr. for Appellant - Joseph Parker for Appellee

Briefed by [William Doherty](#)

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MISSISSIPPI CASES EDITOR

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