

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 30, 2023***SUPREME COURT – ORDERS*****MISS. BAR V. PATRICK****ORDER OF DISBARMENT****ORDER**

The Mississippi Bar, under Rule 6 of the Rules of Discipline for the Mississippi State Bar, filed a formal complaint against Megan Mariah Patrick, a Mississippi resident and member of the Mississippi Bar, after Patrick pled guilty to and was convicted of three counts of the unauthorized representation of claims against the government and three counts of making false statements to a federal agency, all of which are felonies. In Patrick’s answer, Patrick admitted that she had pled guilty to the felony convictions but requested that the order of disbarment be replaced with an order of suspension for an indefinite amount of time. The Supreme Court granted the Bar’s formal complaint requesting to have Patrick disbarred finding the presence of the word “shall” in Rule 6 obligated the Supreme Court to order the immediate suspension of Patrick from practicing law.

Ordered - 2022-BD-01093-SCT (Mar. 28, 2023)

Order of Disbarment by Justice Griffis

Briefed by [Arreyah Whitlock](#)

Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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SUPREME COURT - CRIMINAL CASES**WILLARD V. STATE****CRIMINAL - FELONY**

CRIMINAL PROCEDURE - VOIR DIRE - STRIKING FOR CAUSE - Trial courts have wide discretion to strike a potential juror for cause against whom a cause for challenge exists that would likely affect the juror’s competency or impartiality at trial

EVIDENCE - CROSS-EXAMINATION - HEARSAY - When a hearsay statement has been admitted into evidence, the credibility of the hearsay declarant may be attacked on cross-examination to the extent that would have been allowed had the hearsay declarant actually testified at trial

FACTS

Wade Alan Willard Sr. was pulled over by Justin Ladner, a narcotics investigator, after Ladner observed Willard driving carelessly. Ladner saw Willard throw a white item out of the driver’s side window after Willard came to a stop, which was later confirmed through field testing and forensic analysis to be a plastic bag containing methamphetamine. Willard’s case proceeded to trial. During voir dire examination, the prosecution asked two potential jurors whether they had “a problem or concern when the only witness that you have to a crime is a law enforcement official?” Two potential jurors indicated that they would not be able to convict someone based solely on the testimony of one law enforcement officer.

The prosecution then requested to strike both jurors for cause, which the trial court granted over Willard's objection. The investigation report listed Officer Russell Holliman Jr. as the reporting investigator, but he did not testify at trial. During cross-examination, Willard's attorney questioned Ladner about inconsistencies between the investigation report, the arrest report, and the incident report. The investigation report ("the report") identified a different location than the arrest and incident reports for where the stop occurred. Ladner attributed this discrepancy to the lack of available addresses in the largely undeveloped area where the stop occurred. The report also incorrectly stated that the substance in the plastic bag that Willard threw out of the window was marijuana, which Ladner testified was a typographical error. Lander testified that Holliman used the information he provided him to generate the report and that he did not know where Holliman obtained the wrong information. The prosecution eventually objected to the continuance of the line of questioning about the report, which the court sustained because Ladner did not prepare the report. Willard was subsequently convicted by a jury for possession of methamphetamine. Willard appealed.

ISSUES

Whether the trial court erred by (1) striking two potential jurors for cause and (2) limiting the cross-examination of the arresting officer.

HOLDING

(1) Because there was a fair inference from the potential jurors' responses that they would be unable or unwilling to accept Ladner's uncorroborated testimony to establish Willard's possession of a controlled substance, even if they were persuaded that the substance found was methamphetamine, and because Willard did not show that he was prejudiced by the strikes, the trial court did not err in striking the jurors for cause. (2) Because Ladner answered many questions about the report discrepancies before the trial court sustained the prosecution's objection, any error the trial court made by curtailing the line of questioning regarding the contents of the report was harmless. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2022-KA-00339-SCT (Mar. 30, 2023)

Opinion by Presiding Justice Kitchens

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

George T. Holmes & Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Conner Linkowski](#)

Edited by [Kara Edwards](#) & [Ashley House](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 28, 2023

COURT OF APPEALS - CIVIL CASES

FEOLA EX REL. DIAMONDHEAD COUNTRY CLUB & PROP. OWNERS ASS'N V. MARTHOUSE

CIVIL - OTHER

CORPORATIONS - NONPROFIT - DEMANDS - Miss. Code Ann. § 79-11-193(3) requires that a derivative complaint must allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand; the demand must be provided to corporation's board of directors in writing, provide a meaningful opportunity for the directors to act after learning of a threat of suit, and give the directors sufficient time to act on the demand before legal proceedings are filed

CIVIL PROCEDURE - COMPLAINTS - VERIFICATION - Pursuant to Miss. Code Ann. § 79-11-193(1), a derivative complaint against a nonprofit corporation must be verified by (1) any member or members having five percent or more of the voting power or by fifty members, whichever is less; or (2) any director of the corporation

CIVIL PROCEDURE - DERIVATIVE COMPLAINTS - REPRESENTATIVE CAPACITY - Miss. Code Ann. § 79-11-193 authorizes individual shareholders or members and directors of a nonprofit corporation to assert claims on behalf of the corporation in a representative capacity

CIVIL PROCEDURE - AWARDS - ATTORNEY'S FEES - Miss. Code Ann. § 79-11-193(4) states that when a derivative action against a nonprofit corporation is dismissed, the court may require complainants to pay a defendant's reasonable expenses, including counsel fees, incurred in defending the lawsuit if it finds that the proceeding was commenced frivolously or in bad faith or for the purpose of harassment

FACTS

In 1985, the developer of the Diamondhead community executed two special warranty deeds conveying certain properties to the Diamondhead Country Club & Property Owners Association Inc. ("POA"), a nonprofit corporation. The deeds specifically stated that the conveyed properties were for exclusive use by the owners of real property. In August 2019, Feola, former president of the POA's board of directors, sent a demand letter to the POA board ("the board") alleging that the board allowed improper use of the development's facilities by the general public and threatened legal action if the board did not take action within thirty days to prohibit the use of the common facilities by the general public. In November 2019, Feola filed a lawsuit against the board in both his individual capacity and derivatively on behalf of the POA. The complaint asserted a derivative claim alleging the board breached their fiduciary duties to the POA and its members by opening the exclusive-use properties at issue to the general public, and a breach of contract claim grounded upon the theory that Feola was a third-party beneficiary to the exclusive-use provisions of the properties at issue. After the lawsuit was filed, more than fifty additional plaintiffs filed joinders. In September 2020, the chancery court dismissed the case without prejudice but did not state why the case was dismissed. In July 2020, sixty-four members of the POA ("plaintiffs"), including Feola, filed a new action against the board, which included the same count as the 2019 complaint. The plaintiffs filed an amended complaint eleven days later to assert only a derivative claim on behalf of the POA and omitted any claim for breach of contract in the plaintiffs' individual capacities. Feola's original demand letter was attached to the amended complaint to show that a demand had been made on the board. Feola also verified under oath that the amended complaint's allegations were true and correct to the best of his knowledge. The board filed a motion to dismiss and for sanctions, arguing that the plaintiffs failed to comply with Miss. Code Ann. § 79-11-193. The chancery court granted the board's motion and dismissed the action without prejudice because the plaintiffs failed to serve the board with a new demand before filing the new lawsuit and the amended complaint was not properly verified. The chancery court also ordered plaintiffs to pay the board's legal fees and expenses. Plaintiffs appealed.

ISSUES

Whether (1) the chancery court properly dismissed the amended complaint without prejudice because it did not comply with the statutory demand requirements; (2) the chancery court properly dismissed the amended complaint without prejudice because the plaintiffs failed to comply with statutory verification requirements; (3) the plaintiffs improperly filed the lawsuit in their individual capacities; and (4) the chancery court abused its discretion by awarding the board attorney's fees as a sanction against the plaintiffs.

HOLDING

(1) Because the plaintiffs initially sent the board a demand letter that clearly stated the complaint and gave the board a reasonable opportunity to act, the chancery court improperly dismissed the amended complaint based upon the argument that it did not comply with the statutory demand requirements because, under the statute, plaintiffs were not required to send the board another demand letter before refileing the lawsuit. (2) Because Feola was not a current director of the POA's board, and because Feola was the sole individual who verified the complaint, Feola's verification alone was insufficient and the chancery court did not err in dismissing the plaintiff's amended complaint due to its failure to comply with Miss. Code Ann. § 79-11-193(1). (3) Because the plaintiffs properly filed the lawsuit derivatively on behalf of the POA and clearly asserted a claim on behalf of the POA, the argument plaintiffs improperly filed the lawsuit in their individual capacities was without merit. (4) Because the plaintiffs were not required to make a new demand before refileing the lawsuit, because the plaintiffs made reasonable legal arguments that one plaintiff's verification would be

sufficient, and because there was nothing to show that the plaintiffs filed the lawsuit in bad faith or for the purpose of harassment, the chancery court abused its discretion by awarding the board attorney's fees as a sanction against the plaintiffs. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Hancock County Chancery Court.

Affirmed in Part; Reversed & Rendered in Part - 2021-CA-01078-COA (Mar. 28, 2023)

Opinion by Presiding Judge Wilson

Hon. Jennifer T. Schloegel (Hancock County Chancery Court)

Paul M. Newton Jr. for Appellants - Alben Norris Hopkins Jr. for Appellees

Briefed by [Anna Palmer](#)

Edited by [Thomas Simpson](#) & [Ashley House](#)

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PARKER V. MISS. DEP'T OF HEALTH

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - LOSS OF WAGE-EARNING CAPACITY - FACTORS - Factors which should be considered in determining loss of wage-earning capacity include the amount of education and training which the claimant has had, his inability to work, his failure to be hired elsewhere, the continuance of pain, and any other related circumstances

WORKERS' COMPENSATION - OPINION EVIDENCE - EXPERT TESTIMONY - Issues with reference to an alleged injury are properly within the province of medical experts, and in all but simple and routine compensation cases, it is necessary to establish medical causation by expert testimony

FACTS

In July 2017, Marsha Parker was injured, during the scope of her employment, after she tripped over a tile on the floor and fell. She injured her right wrist, hip, back, and neck. She informed her supervisor, Dr. Angela Filzen, about her injuries and reported to the emergency room, where she was later given a referral to see Dr. George Salloum. He treated her wrist injury, ordered physical therapy, and referred her to Dr. Eric Graham for her neck and back pain. Dr. Graham recommended surgery, but Parker declined; therefore, he recommended another doctor for pain management, but no treatment was administered. In addition, Dr. Graham recommended physical therapy with Doug Roll for a two-day functional capacity exam ("FCE"). In November 2017, Parker completed day one of the FCE but did not complete day two because she claimed she was injured when a weighted box fell on her right shoulder. Roll's medical report showed no indication that Parker was injured, nor did she ask him to stop the exam. However, Roll could not recall whether Parker had informed him of pain. Roll's notes also indicated that she did not attend the second day because of increased pain. In January 2018, Dr. Graham sent Parker for a second FCE, which she completed in March 2018. In August 2018, Parker returned to Dr. Salloum and reported her injuries from the first FCE. In October 2018, Dr. Salloum recommended surgery for Parker's right shoulder. However, the Mississippi Department of Health ("MDH"), Parker's employer, did not approve the surgery as covered under MDH's workers' compensation obligations. In November 2018, Dr. Mitias performed an employer's medical evaluation on behalf of MDH, and his findings could not show a correlation between her torn rotator cuff and the lifting. Furthermore, Parker's previous injury from 2010 showed a partial tear, and the 2018 report showed the tear extended but still partial. Because of this, he recommended surgery, but informed Parker that her private insurance would have to cover it. Parker was released to work in May 2018 but did not return until February 2019. In May 2020, the Administrative Judge ("AJ") entered an order finding Parker had sustained a compensable right-shoulder injury while participating in an FCE, and she sustained a fifty percent loss of wage-earning capacity. MDH appealed AJ's ruling to the Mississippi Worker Compensation Commission ("MWCC"), arguing AJ's finding was contrary to the evidence and applicable law. The MWCC partly reversed and vacated AJ's order and remanded the case. First, the MWCC found that Parker did not establish that she suffered a compensable right-shoulder injury and that, based on the evidence, a legal rebuttable presumption existed of no loss of wage-earning capacity. Then,

the AJ entered a second order finding that Parker sustained a fifty percent loss of wage-earning capacity. MDH appealed AJ's second order, and the MWCC agreed but found that Parker only sustained a fifteen percent loss of wage-earning capacity due to her compensable work-related injuries. Parker appealed.

ISSUES

Whether the MWCC properly found that (1) Parker did not suffer a compensable right-shoulder injury and (2) Parker's compensable injuries had diminished her wage-earning capacity by only fifteen percent.

HOLDING

(1) Because Parker's claim did not constitute a simple and routine case, because Parker failed to show direct evidence that her alleged shoulder injury was a result of her participation in the FCE, because Parker was previously diagnosed with a partial right rotator cuff tear in 2010, and the 2018 MRI was similar, because Dr. Matias did not believe Parker's shoulder injury was related to her lifting tasks, because Parker did not mention injuring her shoulder during the exercises performed in the FCE, and because her heart rate remained the same during the musculoskeletal assessment, the MWCC did not err in finding that Parker did not suffer a compensable right-shoulder injury. (2) Because Parker's ability was only minimally impacted, because Parker did not present evidence showing medical advice restricted the number of hours she could work, because Parker had no medical restrictions from fulfilling her work duties, because she was released to return back to work with a fifty-pound lifting restriction and none of her duties would result in lifting over fifty pounds, because Parker's doctor gave her discretion to decide to lift any item, because her doctor gave her access to any accommodations she needed and she never requested any, and because Parker could have sought the light-duty position of dental hygienist, with an earning capacity higher than what she made with MDH, but did not perform a job search, the MWCC did not err in finding that Parker's compensable injuries had diminished her wage-earning capacity by only fifteen percent. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

DISSENT

Judge Westbrook argued in favor of Parker on both issues. First, she argued that the medical evidence and testimonies supported Parker's version of events or failed to address the issue. Specifically, Dr. Mitias and Dr. Salloum recommended surgery after the 2018 report, a recommendation not given in 2010. Roll's testimony did not contradict Parker's statement because he consistently testified that he had no recollection of what happened during the FCE, and Dr. Mitias did not give his opinion as to whether the box falling on Parker's shoulder could have caused the injury. Lastly, Judge Westbrook argued that the MWCC failed to explain its calculations for reducing Parker's loss of wage-earning capacity from fifty percent to fifteen percent. Therefore, she would reverse and remand to the MWCC for a proper determination of the total loss of wage-earning capacity Parker suffered.

Affirmed - 2022-WC-00552-COA (Mar. 28, 2023)

En Banc Opinion by Presiding Judge Carlton - Dissent by Judge Westbrook

Mississippi Workers' Compensation Commission

James Kenneth Wetzel & Garner James Wetzel for Appellant - Ginger Moore Robey for Appellees

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