

MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 21, 2023**COURT OF APPEALS - CIVIL CASES****COLSON V. WARREN****CIVIL - OTHER**

CHANCERY COURT - JURISDICTION - JUDICIAL DISSOLUTION - Judicial dissolution is a remedy extreme in nature, and one that is to be granted sparingly; dissolution is appropriate when a company's economic purpose is not being met, or when the company is failing financially

CORPORATE LAW - LIMITED LIABILITY COMPANY - JUDICIAL DISSOLUTION - Under Miss. Code Ann. § 79-29-803(1), a chancery court may dissolve a limited liability company in three scenarios: (a) whenever it is not reasonably practicable to carry on the business in conformity with the certificate of formation or the operating agreement; (b) whenever the managers or the members in control of the limited liability company have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority, or the property of the limited liability company is being misapplied or wasted by such persons; or (c) in a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision

CHANCERY COURT - JURISDICTION - REMEDIES - The chancery court has considerable discretion in fashioning a remedy based on the equities of the case before it

FACTS

In 2003, sisters-in-law Dawn Warren and Wendy Colson purchased and each owned half of a corporation called Durfold. The purchase of Durfold included a building and real property at 102 Upton Drive in Jackson. The same year, Warren and Colson created a separate company, Medecon, which was set up as a two-member LLC. The concept was that Durfold would pay rent to Medecon, generating a different income stream and lowering the owners' tax burdens, as rent payments could be deducted as business expenses. There was originally a written lease between the two companies, but for many years, Durfold did not actually write checks to Medecon for rent. After a period of time, the relationship between the two owners fell apart. After mediation, and pursuant to a settlement agreement, Warren bought out Colson's interest in Durfold, becoming its full owner. But Medecon was not addressed in this settlement, and Durfold still occupied Medecon's building. Durfold began writing checks pursuant to the now-expired lease to Medecon. However, the checks were not deposited because Medecon did not have a bank account, and neither of its two members would reach out to the other to set one up, leaving tens of thousands of dollars in potential revenue to Medecon beyond the reach of the two members. Because Durfold was claiming the rent checks it was writing were subject to a deduction from taxable income, the two owners of Medecon had to pay taxes on money not actually received, since there was no bank account to receive the funds. Colson filed a lawsuit to judicially dissolve Medecon, alleging that Medecon was established for the acquisition and management of real estate and that Warren had abused her authority in the management and operations of Medecon, making it no longer reasonably practicable to continue to carry on the business. By the time of the trial, the uncashed checks from Durfold to Medecon spanned thirty-six months, totaling \$99,019. During the trial, Warren explained Medecon did not have a bank account because she did not feel that she should open one unilaterally as part owner. Warren agreed that she could open a bank account for Medecon and would be amenable to Medecon continuing as a company. Colson wanted out of Medecon and asked the trial court to dissolve the LLC. After hearing from the two members of the LLC and its CPA, the trial court issued a concise order finding "that the very limited economic purpose for which Medecon was formed can rather easily continue to be met without dissolution." The trial court ordered the two members to open an account at a bank picked by their CPA, "and

the parties are hereby specifically ordered to cooperate in whatever way required for the establishment of such account.” Since Medecon would continue existing, the trial court held that a formal operating agreement for Medecon would be necessary and ordered both parties to retain counsel to negotiate and draft the agreement within sixty (60) days from the order. Both parties appealed.

ISSUES

Whether the trial court erred by (1) denying the dissolution of Medecon and (2) ordering equitable relief by offsetting Colson’s attorney’s fees against property taxes and repairs Medecon should have paid under the lease and by having the parties negotiate and enter into an operating agreement.

HOLDING

(1) Because the proof at trial was that Medecon could continue to fulfill its economic purpose for which it was established by collecting rent checks, because there was simply no proof of “pervasive fraud or abuse of authority,” and because there is no rule that business partners have to like each other, the Court held that it was well within the discretion of the trial court to deny the request to dissolve the LLC. (2) Because the chancery court had considerable discretion in crafting a remedy, because the trial court’s offset of attorney’s fees was not an award of attorney’s fees but rather a balancing of equities as to Colson’s need to sue to recoup unpaid income and Medecon’s property tax and repair cost liability, and because an operating agreement could settle any tension that might arise in the future and ratify that the purpose of Medceon was to rent the property at 102 Upton Drive, the equitable relief granted was within the discretion of the trial court. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2021-CA-01408-COA (Mar. 21, 2023)

Opinion by Judge McCarty

Hon. William H. Singletary (Hinds County Chancery Court, First Judicial Dist.)

Paul E. Rogers for Appellant - Phillip Buffington & Timothy James Anzenberger for Appellee

Briefed by [Nivory Gordon](#)

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HOLLOWAY V. KING

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - APPEALS - TIMELY APPEAL - Pursuant to Miss Code Ann. § 47-5-807, petitions for judicial review must be filed within thirty days of the exhaustion of administrative remedies

CIVIL PROCEDURE - TIMING - NOTICE OF APPEAL - Miss. Unif. Cir. & Cnty. Ct. R. 5.04 provides that a party who wishes to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk, and a copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed; appeals will be dismissed for lack of jurisdiction if appealing parties fail to notify all involved parties

CIVIL PROCEDURE - DUE PROCESS - DISMISSING APPEALS - There are two components of due process for litigants before dismissing their appeal (1) notice of a deficiency from the clerk pursuant to Miss. R. App. P. 2(a)(2) and (2) the opportunity to remedy the deficiency

FACTS

Jason Holloway filed a request in the Rankin County Circuit Court for the removal of a rule violation report (“RVR”) that he received while he was an inmate at the Central Mississippi Correctional Facility. The warden denied the request on February 9, 2021, and Holloway acknowledged receipt of the warden’s decision on March 11, 2021. The form advised Holloway that he had thirty days from receipt of the decision to seek judicial review. Holloway appealed to the circuit court on April 26, 2021. Pursuant to Miss. Code Ann. § 47-5-807, the circuit court dismissed Holloway’s petition because the petition had been filed more than thirty days after receipt of the warden’s decision. In October 2021, Holloway filed a motion for reconsideration and argued that he had delivered his petition to Mississippi Department of Corrections

(“MDOC”) officials who notarized his request on April 8, 2021. Therefore, his petition was filed timely in accordance with the prison mailbox rule. The circuit court denied Holloway’s motion for reconsideration. Holloway appealed.

ISSUE

Whether the circuit court lacked jurisdiction over Holloway’s appeal.

HOLDING

Because Holloway’s petition for judicial review only provided notice to the circuit court clerk but failed to provide notice to the Attorney General, MDOC, or any of its facilities pursuant to Miss. Unif. Cir. & Cnty. Ct. R. 5.04, the circuit court correctly dismissed Holloway’s petition because it lacked jurisdiction over the appeal. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

DISSENT

Judge McCarty argued that the clerk should have given Holloway notice of his deficiencies pursuant to Miss. R. App. P. 2(a)(2), and should have given him the opportunity to remedy the filing’s deficiencies before it dismissed his appeal. Therefore, the circuit court should not have dismissed Holloway’s petition.

Affirmed - 2021-CP-01351-COA (Mar. 21, 2023)

Opinion by Judge Emfinger - Dissent by Judge McCarty

Hon. M. Bradley Mills (Rankin County Circuit Court)

Pro se for Appellant - Tabatha Baum (Att’y Gen. Office) for Appellees

Briefed by [Spencer Cash](#)

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MYRICK V. UNIV. OF MISS. MED. CTR.

CIVIL - WORKERS’ COMPENSATION

WORKERS’ COMPENSATION - TOTAL DISABILITY - INABILITY TO RETURN TO WORK - Under Miss. Code Ann. § 71-3-17, in order to be deemed permanently totally disabled, a claimant must show something more than an inability to return to the job existing at the time of injury

WORKERS’ COMPENSATION - TOTAL DISABILITY - ALTERNATIVE FORMS OF WORK - A finding that the claimant has not pursued alternate forms of work with sufficient diligence is grounds to deny a claim of total disability

WORKERS’ COMPENSATION - DISABILITY - MEDICAL EVIDENCE - An injured worker must support a claim of disability with medical findings; medical evidence must prove not only the existence of a disability but also its causal connection to employment

FACTS

In January 2018, Merlene Myrick sustained a work-related injury when she slipped and fell on a patch of ice in the University of Mississippi Medical Center (“UMMC”) parking lot as she was walking into work. Myrick sought treatment the following day and over the next few months from various doctors and received various diagnoses. Myrick never returned to work at UMMC. In February 2018, Myrick went to Dr. Leonel Vance for treatment. Dr. Vance noted that Myrick was unable to return to work due to the severity of her pain. In January 2019, Myrick reported to the emergency room claiming she lost motor function in her left lower extremity. An MRI revealed that she had a ruptured disc in her back, and Dr. Adam Lewis performed a left L4-L5 microdiscectomy at that time. Dr. Vance’s notes after the surgery indicated that Myrick “underwent a left L4-L5 microdiscectomy during the first week of January 2019 with Dr. Adam Lewis at Merit Health Crossgates - unrelated to her original injury.” Dr. Vance’s notes also stated that Myrick requested a release to go back to work on March 18, 2019, and Dr. Vance released her to return to work with sedentary duty restrictions. Despite Dr. Vance’s release for Myrick to return to work, he also wrote an excuse for Myrick from May 23,

2019, to June 18, 2019, excusing her from work while she remained under his care. In August 2019, Myrick underwent an “Employer Medical Evaluation” with Dr. Jeffrey Summers, in which he also noted that the microdiscectomy procedure was not related to Myrick’s work injury. Subsequently, Myrick saw Dr. Vance on November 19, 2019, at which time Dr. Vance placed Myrick at maximum medical improvement (“MMI”) and requested a functional capacity examination (“FCE”). Although Dr. Vance placed Myrick at MMI, he issued Myrick a work excuse from November 19, 2019, to January 21, 2020. When Myrick returned to Dr. Vance on January 21, 2020, she continued to report that UMMC would not allow her to return to work with any restrictions. Myrick filed a petition to controvert with the Mississippi Workers’ Compensation Commission (“Commission”) disputing the nature and extent of her injury. Myrick requested permanent disability benefits from the Commission, and she requested to have her back surgery deemed causally related to her work injury. The administrative judge rendered a decision finding that Myrick failed to perform an adequate job search and, therefore, failed to ultimately prove she was entitled to permanent disability benefits. The administrative judge also found that Myrick failed to meet her burden of proof to establish that the surgical procedure performed by Dr. Lewis was related to the work injury and therefore determined that UMMC was not financially responsible for the procedure. The Commission subsequently affirmed the administrative judge’s order. Myrick appealed.

ISSUES

Whether the Commission erred (1) by denying Myrick’s request for permanent and total disability benefits because she failed to conduct a job search and (2) by denying her request to have the L4-L5 microdiscectomy procedure deemed causally related to her work-related injury and therefore be deemed the financial responsibility of UMMC.

HOLDING

(1) Because there was sufficient evidence that Myrick did not adequately pursue alternative employment after UMMC allegedly refused to reinstate her, the Commission did not err by denying permanent and total disability benefits to Myrick. (2) Because the records of Dr. Vance did not offer sufficient affirmative medical evidence to causally connect the subsequent surgery to Myrick’s original work injury and there were other doctors’ findings that showed the opposite, the Commission did not err by denying Myrick’s request to have the L4-L5 microdiscectomy procedure deemed causally related to her work-related injury. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Worker’s Compensation Commission.

Affirmed - 2021-WC-01401-COA (Mar. 21, 2023)

Opinion by Judge Smith

(Mississippi Workers’ Compensation Commission)

Marshall Jackson Goff for Appellant - Daniel Paul Culpepper for Appellees

Briefed by [Hannah Elliott](#)

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RENFROE V. PARKER

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - RES JUDICATA - DISMISSAL OF CLAIM WITHOUT PREJUDICE - Dismissal of a claim without prejudice is not an adjudication on the merits, and therefore, res judicata does not apply

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - PERSONAL LIABILITY - Under the MTCA, torts in which malice is an essential element are not within the course and scope of employment; thus, these intentional torts are outside the scope of the MTCA's waiver of immunity, and the MTCA does not apply and any legal action against a governmental employee for these intentional torts must necessarily proceed against him or her as an individual

CIVIL PROCEDURE - COLLATERAL ESTOPPEL - RE-LITIGATION - Under the doctrine of collateral estoppel, an appellant is precluded from re-litigating specific questions actually litigated and determined by and essential to the judgment in the prior suit, even though a different cause of action is the subject of the present suit; collateral estoppel applies only to questions actually litigated in a prior suit and not to questions that might have been litigated

TORTS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - STANDARD - The standard for a claim of IIED is very high, focusing specifically on the defendant’s conduct and not the plaintiff’s emotional condition; the severity of the conduct at issue must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community

CRIMINAL PROCEDURE - ARRESTS - USE OF FORCE - When making an arrest, a police officer may exert such physical force as is necessary to effect the arrest by overcoming the resistance he encounters, but he cannot take the life of the accused or inflict upon him great bodily harm except to save his own life or to prevent a like harm to himself

TORTS - TORTS AGAINST SPOUSES - LOSS OF CONSORTIUM - Loss of consortium is a derivative claim; if the underlying personal injury claim is disposed of, the loss of consortium claim cannot be maintained on its own

FACTS

In 2018, Michael Renfroe’s mother called the Sheriff’s Office and reported to Sheriff Tucker (“the sheriff”) that Michael needed to be taken into protective custody pending an involuntary-commitment proceeding for mental illness. Later that day, Deputy Parker (“the deputy”) responded to an attempted burglary. While on the way, he approached a truck matching the suspect’s description. Without any instruction, the driver of the truck, Michael Renfroe, stopped the vehicle, parked it on the side of the road, emerged with his hands out and his palms open, and then dropped down onto his hands and knees. As Michael’s wife, Amanda Renfroe exited the vehicle, Michael suddenly sprinted toward the deputy while yelling. The deputy tased Michael, but Michael snatched the taser darts from his chest and continued to charge toward the deputy. After the taser failed to subdue Michael, the deputy began to fight him. Michael placed his hands around the deputy’s throat, tried to choke him, and hit him on the side of his head. The deputy eventually managed to free himself from Michael and stepped away, but Michael started running toward him again. In response, the deputy drew his weapon and fired four rapid shots at Michael until he felt Michael was no longer a threat to his safety. The deputy stated he only used deadly force to prevent Michael from seriously injuring or killing him. Michael died at the scene as a result of his injuries. In 2019, Amanda filed a federal complaint in the United States District Court for the Southern District of Mississippi against Deputy Parker and Sheriff Tucker (“the officers”) in their individual and official capacities. In her complaint, Amanda raised a claim alleging that the deputy was liable because he violated Michael’s Fourth Amendment right to be free from an unreasonable seizure of his person. Amanda also asserted seven federal and state-law claims. The district court entered an order dismissing Amanda’s federal individual-capacity claims against the officers finding that the deputy shooting Michael was objectively reasonable. The district court found that the deputy did not violate Michael’s Fourth Amendment rights by using excessive force against him. Amanda filed a motion for reconsideration of the district court’s decision, which was denied. In August 2019, the district court entered an order granting summary judgment in favor of the officers on the federal claims and dismissed Amanda’s state-law claims without prejudice. Amanda appealed to the Fifth Circuit Court of Appeals, which affirmed the district court’s decision. Amanda then filed a petition for writ of certiorari to the United States Supreme Court, which was denied. After the federal district court dismissed her claims, Amanda filed a complaint against the officers in their official and individual capacities in the Madison County Circuit Court. Amanda asserted claims for intentional infliction of emotional distress (“IIED”) as to Michael, loss of consortium and IIED as to Amanda, assault and battery as to Michael, and related wrongful death damages. The officers answered the complaint and claimed qualified and absolute immunity under the provisions of Miss. Code Ann. § 11-46-9(c)-(d). The officers filed a motion for summary judgment in the circuit court. In August 2021, the circuit court granted summary judgment finding that the officers were immune from suit under § 11-46-9(c)-(d) of Miss. Torts Claim Act (“MTCA”). The circuit court also entered a final judgment in favor of the officers the same day and dismissed all claims and defendants with prejudice. Amanda appealed.

ISSUES

Whether (1) the doctrine of res judicata barred state-law claims after federal claims were dismissed; (2) summary judgment in favor of the officers acting in their official capacities was proper; and (3) summary judgment in favor of the officers acting in their individual capacities was proper.

HOLDING

(1) Because the district court dismissed Amanda’s state-law claims without prejudice, res judicata did not bar Amanda from bringing her state-law claims in circuit court. (2) Because the MTCA did not apply to claims IIED, assault, and battery against governmental employees in their official capacities, the circuit court properly granted summary judgment

in favor of the officers for the claims against them in their official capacities. (3) Because the district court addressed the issue of whether the deputy used excessive force against Michael and ruled that the deputy's use of force was objectively reasonable and not excessive by granting summary judgment with prejudice, Amanda was collaterally estopped from bringing her state-law claims of IIED, assault, and battery, and as a result, loss of consortium against the officers in their individual capacities in circuit court, and even if collateral estoppel did not apply, because the deputy's use of force was objectively reasonable and not excessive, because Michael's conduct that led up to the shooting would have led a reasonable officer to perceive a threat of death or serious bodily harm under the circumstances, because the deputy was considerably smaller than Michael and his attempts to use non-lethal force failed to stop Michael from attacking him, and because Amanda's state-law claims failed, Amanda's loss of consortium claim also failed, and ultimately Amanda failed to meet her burden proving the existence of a genuine issue of material fact as to all claims and the circuit court properly granted summary judgment in favor of the officers for the claims against them in their individual capacities. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge McDonald argued that the circuit court improperly dismissed Amanda's claims against the officers in their individual capacities because those claims did not fall under the MTCA. Additionally, she argued that the majority improperly made initial findings and determinations, that appellate courts should not make, by determining that Amanda failed to meet her burden of proving the existence of a genuine issue of material fact. Therefore, the claims against the officers in their individual capacities should be remanded to the circuit court.

Affirmed - 2021-CA-01048-COA (Mar. 21, 2023)

En Banc Opinion by Presiding Judge Carlton - Concurrence in Part & Dissent in Part by Judge McDonald

Hon. M. Bradley Mills (Madison County Circuit Court)

William Charles Bell for Appellants - Charles Edward Cowan for Appellees

Briefed by [Tyler White](#)

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