

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 16, 2023**SUPREME COURT - CIVIL CASES****CITY OF CANTON Bd. of Alder. v. Slaughter****CIVIL - STATE BOARDS & AGENCIES**

CIVIL PROCEDURE - JURISDICTION - APPELLEE - Under Miss. Code Ann. § 11-51-75(a)(i), a notice of appeal from a decision of a municipal authority shall contain the name of the county board of supervisors or the name of the municipality as the appellee

CIVIL PROCEDURE - NOTICE OF APPEAL - STATUTORY PERIOD - A notice of appeal is timely if it is filed within a ten-day statutory period

ADMINISTRATIVE LAW - STATE AGENCIES - DUE PROCESS - The procedural due process for a public officer who is subject to adverse government action must receive notice of the charges against them, an explanation of the employer's evidence, and an opportunity to be heard

ADMINISTRATIVE LAW - STATE AGENCIES - PUBLIC OFFICER - A public officer is defined as a person appointed or elected to perform a duty concerning the public

ADMINISTRATIVE LAW - STATE AGENCIES - MAYOR PRO TEMPORE - An alderman acting as the mayor pro tempore and presiding over a Board meeting may only vote in the case of a tie, just as the acting mayor

FACTS

L.C. Slaughter and Isiac Jackson were appointed to five-year terms by the Board of the Canton Municipal Utilities Commission ("CMU"). Both were removed from their positions as CMU Commissioners by the City of Canton Board of Alderman ("the Board") in May 2020. Slaughter and Jackson appealed their removal to the circuit court in June 2020. The circuit court granted a stay of the removal to determine whether due process was afforded in their removal. The circuit court ordered the Board to file a brief on the issue. The Board instead filed a resolution to issue notice to Slaughter and Jackson as to cause for the discharge and provided there would be a hearing at the next Board meeting in July. The City of Canton emailed Jackson and Slaughter the date and time of the hearing and the reasons for their pending removal. On July 17, William Truly, the Canton Mayor, timely vetoed the July 7 resolution. At the July Board meeting, Mayor Truly was absent, and the Board named Alderman Fred Esco as the mayor pro tempore to preside over the meeting. The Board then voted to override Mayor Truly's veto of the resolution to issue notice and an opportunity to be heard by Slaughter and Jackson. The vote resulted in a five-one majority vote overriding the veto including Alderman Esco's vote. Consequently, the Board removed both Slaughter and Jackson from their positions. Neither Slaughter, Jackson, nor their attorneys were present. The reasons the Board stated included taking official actions at CMU Board meetings without having bond as required by statute, utilizing CMU equipment to have a tree cut down on his residence and taken away, incorrectly advising the public that video recordings of public meetings were impermissible, and not living in the City of Canton. On July 27, Mayor Truly issued a veto of the hearing held for Jackson and Slaughter. Soon after, Jackson and Slaughter filed an appeal for their removal from the commission. On August 4, the Board held a special meeting to override Mayor Truly's veto from July 27. Mayor Truly was absent, and Alderman Esco was again appointed mayor pro tempore. With Alderman Esco's vote, the vote to override the veto was five-zero. Slaughter and Jackson then filed an Emergency Motion for Stay Pending Appeal of the Board's resolution to remove them. The circuit court denied the motion in September 2020. The circuit court then found that the July 21 Board vote to override the mayor's veto lacked the required two-thirds majority, so the actions taken to remove Jackson and Slaughter were void as a matter of law. Jackson and Slaughter were re-instated as CMU commissioners. The Board appealed.

ISSUES

Whether (1) Slaughter and Jackson’s notice of appeal should have been dismissed on jurisdictional grounds; (2) notice and an opportunity to be heard was required to remove a CMU commissioner; and (3) the mayor properly vetoed the resolutions of the Board, and the Board properly overrode those vetoes.

HOLDING

(1) Because Jackson and Slaughter’s notice of appeal naming the Board, rather than the municipality, as the appellee sufficiently complied with Miss. Code Ann. § 11-51-75(a)(i), because Jackson and Slaughter’s notice to appeal included all matters that they wished the circuit court to consider, and because the notice of appeal was filed timely within the ten-day statutory limit, the notice of appeal was sufficient to confer jurisdiction. (2) Because the procedural due process for a public officer subjected to adverse government action received notice of the charges against them, an explanation of the employer’s evidence, and an opportunity to be heard, and because CMU commissioners are considered public officers, Jackson and Slaughter were entitled to notice and an opportunity to be heard prior to removal for cause. (3) Because Mayor Truly’s veto was properly executed within the statutory ten-day limit, because an alderman acting as the mayor pro tempore that presided over the Board meeting improperly cast a vote in the veto, there was less than the required amount of votes to override the veto and the Board failed to override the veto which resulted in the improper removal of Slaughter and Jackson. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2021-CA-01210-SCT (Mar. 16, 2023)

Opinion by Justice Chamberlin

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

Kimberly Banks & Pieter Teeuwissen for Appellant - Edward Blackmon Jr. for Appellees

Briefed by [Albert Soussis](#)

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CITY OF JACKSON V. CITY OF PEARL

CIVIL - MUNICIPAL BOUNDARIES & ANNEXATION

MUNICIPAL LAW - ANNEXATION - INCORPORATION - Miss. Code Ann. § 61-9-5 is applicable to any municipality that, under the authority of Chapter 9, has incorporated airport property that is situated in another county
MUNICIPAL LAW - ANNEXATION - INCORPORATION - Pursuant to Miss. Code Ann. § 61-9-5, if any municipality incorporates into its corporate boundaries property situated in a county other than the county in which the principal office of the municipality is located, the municipality shall not thereafter extend its boundaries into such other county without, in addition to complying with all existing laws of the state governing or relating to the extension of corporate boundaries of municipalities, first obtaining the consent and approval of the board of supervisors of such county into which it desires to extend its corporate

CIVIL PROCEDURE - STATUTORY INTERPRETATION - LEGISLATIVE INTENT - The court is tasked to fit, if possible, all parts of a statute into a harmonious whole while construing together the entire statute and still giving effect to every part, if it can be done without manifestly violating the intent of the legislature

FACTS

In August 2019, the Jackson City Council passed an ordinance incorporating land in Rankin County into the corporate limits and boundaries of the City of Jackson. Jackson attempted to incorporate land consisting of an undeveloped area around the Jackson-Medgar Wiley Evers International Airport, land which Jackson allegedly owned. The City of Pearl, the City of Flowood, and Rankin County challenged the validity of the ordinance. In December 2021, the circuit court found that, pursuant to Miss. Code Ann. § 61-9-5, the ordinance was void because the City of Jackson failed to obtain consent and approval from the Rankin County Board of Supervisors. The City of Jackson appealed.

ISSUE

Whether the circuit court erred by finding that the ordinance was void.

HOLDING

Because Miss. Code Ann. § 61-9-5 applied to the City of Jackson, because the city previously incorporated airport property under the authority of Chapter 9, and because the City of Jackson extended the boundaries of its airport into Rankin County without obtaining consent and approval from the Rankin County Board of Supervisors, the circuit court did not err by finding that the ordinance was void. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2021-AN-01422-SCT (Mar. 16, 2023)

Opinion by Justice Chamberlin

Hon. David Anthony Chandler (Hinds County Circuit Court)

J. Chadwick Mask, Jacob Stutzman, Anita Mathews Stamps, Catoria P. Martin, Lee Davis Thames, Jr, & Carrie E. Johnson for Appellant - John P. Scanlon, Jerry L. Mills, Zachary L. Giddy, William “Trey” Jones, III, Norman Bailey, Jr., Jacob A. Bradley, & Craig Lawson Slay for Appellees

Briefed by [Maya Langendoen](#)

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DAVIS V. DAVIS

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

TORTS - NEGLIGENCE - ALIENATION OF AFFECTION - The elements of the tort of alienation of affection are: (1) wrongful conduct of the defendant; (2) loss of affection or consortium; and (3) a causal connection between such conduct and loss; alienation of affection requires loss of affection or consortium, an interest that is personal and arises out of the marriage relation

TORTS - ALIENATION OF AFFECTION - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 15-1-49, claims of alienation of affection are governed by a three-year statute of limitations

CIVIL PROCEDURE - PLEADINGS - DISCOVERY RULE - Pursuant to Miss. Code Ann. § 15-1-49, the discovery rule provides that in actions involving latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence, should have discovered the injury; the discovery rule does not apply to alienation of affection cases, so it does not toll the statute of limitations

CIVIL PROCEDURE - AWARDS - JURY INSTRUCTION - A court is not obligated to instruct nor suggest instructions to the jury voluntarily, in addition to those which the parties tender; a party is obligated to obtain proper instructions, and cannot assert error for omission; a failure to request an instruction generally bars or waives correction on appeal

FACTS

John and Sandra Davis were married in 1979. Two children were born during their marriage. In 1980, Horgan pursued Sandra and began having an affair, which ended in the late 1990s. Sandra testified that the marriage between her and John was never good, although John testified that he and Sandra were happily married. In 1999, John and Sandra separated and their divorce was finalized in 2001. Sandra was granted custody of the children and John was ordered to pay child support of \$838 per month. A Mississippi court decided custody and property issues since the family lived in Mississippi one year before the divorce. Sandra filed an affidavit stating that she and John were the parents of their two children. In July 2018, John learned that the children were possibly not his biological children. On August 24, 2018, John filed a complaint against Sandra and Horgan, alleging fraud against Sandra and alienation of affection against Horgan. John also alleged that Sandra and Horgan were jointly and severally liable for fraud, alienation of affection, and intentional infliction of emotional distress (“IIED”). Sandra and Horgan moved to dismiss the complaint based on the statute of limitations and failure to plead fraud with particularity. The trial court denied the motion to dismiss and allowed John to amend his complaint regarding fraud. A trial was held on June 30, 2020. Horgan testified he could not remember many details about his sexual encounters with Sandra or that he was the children’s father. The jury was instructed regarding the elements of alienation of affection, IIED, and fraud. John submitted instruction P-9, which allowed the jury to determine damages for both fraud and IIED. However, John voluntarily withdrew P-9 and did not

offer any substitutes for it. The alienation of affection jury instruction, regarding only Horgan, instructed the jury that if they found the elements of alienation of affection, the jury could award John for alienation of affection. The trial court then awarded a final judgment against Sandra and Horgan, jointly and severally, for \$700,000. Sandra and Horgan filed post-trial motions, but the trial court denied the motions. Sandra and Horgan appealed.

ISSUES

Whether the trial court erred by (1) failing to dismiss John's claim for alienation of affection against Horgan; (2) abusing its discretion by failing to grant a jury instruction regarding damages; and (3) denying Sandra and Horgan's post-trial motions and transferring final judgment award damages for John's claims of fraud and IIED.

HOLDING

(1) Because John did not notice any change or loss in his marriage during the time of the affair, and because the discovery rule did not toll the statute of limitations in an alienation of affection case, the trial court erred by failing to dismiss John's claim for alienation of affection against Horgan. (2) Because John did not submit a proper damages instruction and failed to request any instruction on damages for his fraud or IIED claims, because the only damages instruction offered was incredibly specific to alienation of affection, and because John voluntarily withdrew his other damages instruction without offering substitute instructions, John waived his ability to raise a correction on appeal and the trial court did not abuse its discretion by failing to grant a jury instruction regarding damages. (3) Because the alienation of affection claim was barred by the statute of limitations, and because the jury awarded no other damages, no other damages could be transferred to John's fraud and IIED claims against Sandra and Horgan and the trial court erred in denying Sandra and Hogan's post-trial motions. Therefore, the Supreme Court reversed and rendered the judgment of the Pike County Circuit Court.

SPECIAL CONCURRENCE

Justice Chamberlin agreed with the majority but argued the tort of alienation of affection should be abolished. He argued the tort claim no longer has a place in modern civilized society because it incorrectly implies that affection is the property of another. He argued the harm this tort inflicts far outweighs any perceived good it accomplishes.

Reversed & Rendered - 2020-CA-01304-SCT (Mar. 16, 2023)

Opinion by Presiding Justice King - Special Concurrence by Justice Chamberlin

Hon. Barry W. Ford (Pike County Circuit Court)

Brad Russell Boerner, John S. Grant IV, & John S. Grant III for Appellants - Edwin L. Bean Jr. & Tyler Bo Shandy for Appellee

Briefed by [Nivory Gordon](#)

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MISS. BAPTIST FOUND. V. FITCH

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - MORTMAIN LAWS - REVERSION - Pursuant to Miss. Code Ann. § 91-5-31, in 1940, land devised to a religious institution may be held as a devisee for a period of no longer than ten years after such devise becomes effective; if such land is not sold and disposed of within ten years, then it shall revert to the heirs at law of the testator under whose will it was devised to the institution holding it

WILLS & ESTATES - ENFORCEMENT POWER - FRANCHISES AND POWERS OF CHARITABLE SOCIETIES - Devise to charitable institution became effective, within the meaning of the mortmain statute, as of the death of devising landowner

WILLS & ESTATES - TRUSTS - MORTMAIN EXEMPTION - For a property in a trust benefitting a proscribed institution to be exempt from the mortmain requirement it may not have the trustee or trustees be the same as the owners, management, or trustees of a proscribed institution which is designated to share in the income or benefits of the trust

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - LAND RECOVERY ACTIONS - Actions to recover land are subject to a ten-year statute of limitations pursuant to Miss. Code Ann. §§ 15-1-7, -9

FACTS

Reverend Harvey McCool owned one-half mineral interest (“Subject Mineral Interest”) in property in Amite County. McCool died in testate in 1969, and his will was probated in Louisiana. McCool bequeathed his sister, Ideniah Kerr, and his wife, Maggie McCool, his personal items. McCool devised the remainder of his property, including the Subject Mineral Interest, to the Mississippi Baptist Foundation (“MBF”) as Trustee. Maggie was McCool’s only heir-at-law and she died testate in 1973, leaving her residuary estate, including the Subject Mineral Interest, to her three children from a previous marriage. Kerr died in 1986. MFB took possession of the Subject Mineral Interest in 1969. Forty years later, in 2019, MBF filed a complaint to probate McCool’s will in Mississippi and to confirm and quiet title to the Subject Mineral Interest. The attorney general intervened in 2020 because MFB challenged the constitutionality of mortmain laws. Both parties moved for summary judgment. The trial court found that Kerr and Maggie were income beneficiaries, with no possessory interest in the property, and that MBF was consequently divested of the property interests in 1979, ten years after McCool’s death. The Mississippi Baptist Foundation appealed.

ISSUES

Whether the (1) mortmain laws were triggered by McCool’s death; (2) Subject Mineral Interest reverted to McCool’s heirs in 1979; and (3) mortmain laws were constitutional.

HOLDING

(1) Because MBF had a possessory interest in and had full control over the Subject Mineral Interest as trustee in 1969 when McCool died, and because the heirs were income beneficiaries with no possessory interest in the property, the trial court correctly found that McCool’s death triggered the ten-year portion of the mortmain laws. (2) Because the mortmain laws were triggered in 1969, the trial court correctly ruled that the Subject Mineral Interest reverted to McCool’s heirs in 1979. (3) Because MFB was charged with knowing the mortmain laws in 1969 which provided that it would be divested of the Subject Mineral Interest and would revert back to the heirs in 1979, and because MFB failed to timely assert any claims regarding the constitutionality of the mortmain laws, the Supreme Court declined to address the constitutionality of the mortmain laws. Therefore, the Supreme Court affirmed the judgment of the Amite County Chancery Court.

Affirmed - 2022-CA-00065-SCT (Mar. 16, 2023)

Opinion by Presiding Justice King

Hon. Debra K. Halford (Amite County Chancery Court)

William Dement Drinkwater, Eugene Robert Wasson, & Travis Jonathan Conner for Appellant - Stephen Friedrich Schelver (Att’y Gen. Office) for Appellees

Briefed by [Oliver Samples](#)

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UNIV. OF MISS. MED. CTR. V. KELLY

CIVIL - MEDICAL MALPRACTICE

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - Miss. R. Evid. 702 states if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case

EVIDENCE - EXPERT TESTIMONY - TEST FOR ADMISSIBILITY – Miss. R. Evid. 702 requires the trial court to affirmatively answer a two-fold inquiry: (1) the witness must be qualified by virtue of his or her knowledge,

skill, experience, or education; and (2) the witness's scientific, technical, or other specialized knowledge must assist the trier of fact to understand or decide a fact in issue; put simply, the testimony must be both relevant to the case at hand and based on reliable methodology

EVIDENCE - MEDICAL MALPRACTICE - EXPERT TESTIMONY - Knowledge of medicine alone does not demonstrate knowledge of a specialized practice area absent a record of training, experience, or specialization in the specific area of medicine in question

TORTS - MEDICAL MALPRACTICE - BURDEN OF PROOF - Expert testimony is generally required to establish the negligence of a physician

FACTS

On August 14, 2019, Vincent Kelly's left foot "was crushed" in a forklift accident at his place of work. After the incident, Kelly was transferred to the University of Mississippi Medical Center (UMMC) after initially being taken to Mississippi Baptist Medical Center. Kelly's X-ray suggested, "that he had sustained lacerations on the second, third, and fifth toes, and fractures of the first and third through fifth toes." Kelly received pain and antibiotic medications at UMMC and was seen by an orthopedic surgeon. The "orthopedic surgeon reduced one fracture, washed and dressed the wounds, and prescribed additional pain and antibiotic medications...and instructed Kelly to keep weight off of the left foot to promote tissue rest and attend a follow-up appointment at the Jackson Medical Mall in ten days for further orthopedic evaluation and care." Thereafter, Kelly received "strict precautions to return for changes in neurovascular status of his foot...or changes in color." On August 19, 2019, Kelly went back to UMMC where "he complained of uncontrolled pain and discoloration of his third and fourth toes, which he said had turned black the previous day." The following day, Dr. Bergin conducted a surgical assessment of Kelly's injured foot and "determined that Kelly's third and fourth toes were dysvascular (lacking circulation or blood flow) and in need of amputation." Dr. Bergin removed the two toes. Dr. Bergin performed wound cultures and confirmed an infection existed. Dr. Bergin executed Kelly's post-operative care associated with his injury. In his medical malpractice suit, Kelly alleged that on August 14, 2019, UMMC did not accurately tend to his injury and that the infection was the result of medical negligence which caused the double toe amputation. With Dr. Bergin as its expert witness, UMMC responded that the care Kelly received aligned with the appropriate standard of care. Dr. Bergin testified that the infection was a result of the crush injury, that the crush injury affected the flow of the antibiotic medications Kelly received, and that the amputation could not have been avoided through different care. UMMC filed a motion for summary judgment and argued that Kelly's claim was not supported by expert testimony. To rebut, Kelly provided Dr. Joseph White as an expert witness and an affidavit from Dr. White that argued that there was a material fact about UMMC's negligence. UMMC's motion for summary judgment was denied and UMMC then sought an interlocutory appeal. UMMC appealed.

ISSUES

Whether the trial court erred by (1) finding that Dr. White was qualified as an expert witness and (2) denying UMMC's motion for summary judgment.

HOLDING

(1) Because Dr. White's curriculum vitae was not attached to the affidavit and submitted to the court, because Dr. White's experience in emergency medicine is not enough to show that he has experience or knowledge over the care of impact injuries or infections, and because there was no showing by either declaration of expertise or presentation of a curriculum vitae that Dr. White was qualified as to this issue, Kelly failed to prove Dr. White's specialized testimony would assist the trier of fact to understand or decide a fact in issue, and the trial court erred by finding that Dr. White was qualified as an expert. (2) Because Kelly failed to submit sufficient evidence in the record to establish that Dr. White was qualified as an expert witness, because Dr. White's testimony was inadmissible, because expert testimony is generally required to survive summary judgment in a medical malpractice case, and because there was no expert testimony, there existed a failure of proof on an essential element of Kelly's negligence claim, and the trial court erred by denying UMMC's motion for summary judgment. Therefore, the Supreme Court reversed the judgment of the Hinds County Circuit Court and rendered summary judgment in favor of UMMC.

Reversed & Rendered - 2022-IA-00034-SCT (March. 16, 2023)

Opinion by Justice Griffis

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

Stephen P. Kruger, T.L. “Smith” Boykin, III, & Hannah Katherine Herrin for Appellant - Phillip W. Gaines & Barry W. Howard for Appellee
Briefed by [AnnaGrace Meeks](#)

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WHITE V. TARGA DOWNSTREAM, LLC

CIVIL - PERSONAL INJURY

PERSONAL INJURY - IMMUNITY - INTIMATELY CONNECTED DOCTRINE - The intimately connected doctrine immunizes a premises owner against claims of an independent contractor for injuries that arise out of or are intimately connected with the work that the independent contractor was hired to perform

PERSONAL INJURY - IMMUNITY - INTIMATELY CONNECTED DOCTRINE - The question as to whether the intimately connected doctrine applies does not turn on the frequency of use of the complained of equipment or premises, but rather, the user’s knowledge of the dangerous condition

INTIMATELY CONNECTED DOCTRINE - APPLICABILITY - INDEPENDENT CONTRACTORS - The danger of being provided a defective instrumentality by the employer is not inherent to the work of an independent contractor, and thus, is not covered by the intimately connected doctrine; employers supplying materials to be used for work purposes must use reasonable care to either make the materials safe for use or to inform those expected to use the materials

FACTS

Andy White, an independent contractor employed by Ergon Trucking, Inc., was responsible for loading and hauling propane from Ergon’s storage facility. White was licensed to haul such hazardous materials, had supervised training sessions to load and unload the propane trailer, and received Targa’s site-specific verification. The loading and unloading of propane required White to attach a Targa hose to an Ergon trailer, and a detachable handle was placed on the valve of the hose in order to detach Targa’s hose from Ergon’s trailer. The detachable handle was not a part of the originally manufactured hose condition; Targa alleged that it modified the valve to remove the handle to make the equipment safer for its intended use. On January 14, 2017, White used Targa’s loading equipment to load the propane into the trailer, a task he had completed without incident nineteen times before and seventeen of those times at the same loading dock with the same equipment. This time, however, when he was returning the Targa hose to its resting tray, the valve on the Targa hose opened, and liquified propane began spilling out of the hose. White then tackled the hose, grabbed the detachable handle, placed it back on the Targa hose valve and, eventually, closed the valve, stopping the flow of propane. White could not recall whether he had removed the detachable handle from the valve of the Targa hose prior to returning it to its resting tray. Following the incident, White did not immediately experience any injury but eventually suffered from stinging in his legs. The day following the incident, White sought medical treatment for blisters that had formed on his legs and what he described as “excruciating pain.” White proceeded to file an action against Targa, alleging damages for several causes of action centering around the claim that Targa negligently owned, operated, and maintained its propane storage facility and loading equipment. Targa filed a motion for summary judgment following White’s failure to submit a timely expert report. Targa’s motion for summary judgment was eventually denied, holding a question of material fact existed regarding the Targa hose being in a dangerous condition. Targa then filed a motion to reconsider which was also denied. The matter went to trial where Targa moved for summary judgment for a second time, this time contending that the intimately connected doctrine barred White’s claims. The circuit court granted Targa’s second motion for summary judgment, holding that Targa was under no duty to provide a safe working environment for White or to warn White of the modification to the valve, since the injury arose out of and was intimately connected with the work White was hired to perform. White appealed.

ISSUES

Whether (1) the intimately connected doctrine applies to shield Targa from liability and (2) Targa’s summary judgment motion may be granted on alternative grounds.

HOLDING

(1) Because a genuine issue of material fact existed concerning whether Targa created a dangerous condition and White's knowledge of the alleged dangerous condition, and because it was deemed illogical to give a premises owner immunity when it remained unclear which party was in the best position to avoid the harm, the intimately connected doctrine did not apply to immunize Targa from liability. (2) Because a genuine issue of material fact existed, Targa was not entitled to summary judgment on the alternative grounds it raised before the Court. Therefore, the Supreme Court reversed the judgment of the Forrest County Circuit Court and remanded the case for further proceedings.

Reversed & Remanded - 2022-CA-00020-SCT (Mar. 16, 2023)

Opinion by Justice Chamberlin

Hon. Jon Mark Weathers (Forrest County Circuit Court)

S. Everett Pepper, S. Craig Panter, & Daryl Porter, Jr. for Appellants - Stacey L. Strain & Sage E. Harless for Appellee

Briefed by [Mason Borneman](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 14, 2023

COURT OF APPEALS - CIVIL CASES

HOLMES V. LANKFORD

CIVIL - CONTRACT

CIVIL PROCEDURE - STANDING - REAL PARTY IN INTEREST - Miss. R. Civ. P. 17(a) provides, a “real party in interest” is defined as a person who is actually and substantially interested in subject matter as distinguished from one who has only a nominal, formal, or technical interest in or connection with it

CIVIL PROCEDURE - LIMITED LIABILITY COMPANY - STANDING - When one elects to conduct his business through a limited liability company, just as he received protection of his personal assets from liability in doing so, he also gave up standing to claim damages to the limited liability company even if he also suffered personal damages

CONTRACTS - QUANTUM MERUIT - ELEMENTS - A claim for recovery in quantum meruit lies when (1) valuable services were rendered or materials furnished; (2) for the person sought to be charged; (3) which services and materials were accepted by the person sought to be charged, used and enjoyed by him; and (4) under such circumstances as reasonably notified the person sought to be charged that the plaintiff, in performing such services, was expected to be paid by the person sought to be charged

CONTRACTS - DEBTOR-CREDITOR RELATIONSHIP - LIENS - Miss. Code Ann. §§ 85-7-403 to -405 states that a contractor may create a lien on property for which they furnish labor, services, or materials for the owner, with recovery limited to the amount due and owing the lien claimant under the terms of its express or oral contracts. Such lien is enforceable only upon the contract meeting certain conditions, including substantial compliance by the party claiming the lien with the party's contract for the work performed or labor, services, or material provided

CONTRACTS - UNJUST ENRICHMENT - POSSESSION ELEMENT - To collect under an unjust enrichment, the claimant must show there is no legal contract but the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another

FACTS

In June 2014, John Lankford and Mike Holmes Construction LLC (“MHC”) entered into a right-to-mine agreement for a sand and gravel operation on Lankford's property. Michael I. Holmes, the sole member of MHC, was not a party to the agreement. Three years later when the project did not work out, Holmes and MHC sued Lankford for damages and other relief on five grounds: recovery on a contractor's lien filed on behalf of MHC; breach of contract; quantum meruit; unjust enrichment; and negligent misrepresentation. However, in 2011, MHC was administratively dissolved and was never reinstated to do business. Thus, it had been dissolved for over five years when MHC and Holmes filed

the complaint against Lankford. As a result, the circuit court granted summary judgment to Lankford and found that MHC lacked the capacity to sue since it had been administratively dissolved before the complaint was filed. The circuit court also found that Holmes was not a party to the agreement or lien, and thus, he could not maintain the claims for breach of contract or lien recovery in his individual capacity. Additionally, the claims for unjust enrichment and quantum meruit arose from the agreement between MHC and Lankford, which disqualified Holmes, individually, without standing to assert them. Moreover, the circuit court held that Holmes was without standing to assert the negligent misrepresentation claim because it related to Lankford's alleged inducement of MHC to enter the agreement, not Holmes, individually. Because Holmes was not a party to the agreement, he might have been able to recover for any individual claims apart from the agreement; however, Holmes did not present any evidence that would support any such claims. Holmes appealed.

ISSUES

Whether Holmes (1) individually had standing and was a real party in interest to recover damages based upon the theory of quantum meruit; (2) individually had standing and was a real party in interest to recover damages based upon the theory of unjust enrichment; (3) individually had standing and was a real party in interest to assert a negligent misrepresentation claim; and (4) had a valid right-to-mine agreement.

HOLDING

(1) Because there was insufficient evidence in the record to create a genuine issue of material fact that Holmes had a reasonable expectation of compensation individually, or that Lankford was expected to pay Holmes himself for any services performed or expenses incurred under the right-to-mine agreement, the circuit court did not err in finding Holmes did not individually have standing nor was he the real party in interest to assert a quantum meruit claim. (2) Because Holmes signed and entered into the contract with Lankford only on MHC's behalf, further, because Holmes continued to operate as MHC throughout the project, and because the complaint was brought by both MHC and Holmes, there was no basis for implying Lankford promised that he would reimburse Holmes himself for expenses he incurred and labor he performed under the agreement between MHC and Lankford, and the circuit court did not err in finding Holmes did not have standing nor was he the real party in interest to recover damages based upon a theory of unjust enrichment. (3) Because Holmes failed to offer any argument or supporting evidence that he was personally induced to enter the right-to-mine agreement, Holmes was without standing and was not a real party in interest to assert a negligent misrepresentation claim. (4) Because the validity of the right-to-mine agreement based upon MHC's purported lack of power to contract was not argued at the circuit court, the argument was waived on appeal. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2022-CA-00203-COA (Mar. 14, 2023)

Opinion by Presiding Judge Carlton

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

Michael James Thompson Jr. for Appellants - Robert Thomas Schwartz & Christian Strickland for Appellee

Briefed by [Kara Edwards](#)

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MOSS v. MOSS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - FAULT-BASED DIVORCE - HABITUAL CRUEL & INHUMAN TREATMENT - To prove habitual cruelty sufficient to justify a divorce, a party must show conduct that either: (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous as to make the marriage revolting to the nonoffending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance; habitual ill-founded accusations, threats and malicious sarcasm, insults, and verbal abuse may cause such mental suffering as to destroy health and endanger the life of the innocent spouse

EVIDENCE - EXPERT WITNESS TESTIMONY - ADMISSIBILITY - Miss. R. Civ. P. 26(b)(4)(A)(i) prevents trial by ambush by allowing a requesting party to require, through interrogatories, any other party to identify any witness whom the responding party expects to call as a witness at trial to present evidence under Miss. R. Evid. 702, 703, or 705.; expert witness testimony is not limited to only the literal words from their opinion and summary of the related grounds, as such a view would place form over substance

EVIDENCE - SPOUSAL DOMESTIC ABUSE - TESTIMONY - Miss. Code Ann. § 93-5-1 provides that spousal domestic abuse may be established through the reliable testimony of a single credible witness, who may be the injured party

FAMILY LAW - DIVORCE - SEPARATE MAINTENANCE - A claim for separate maintenance is no longer proper when a divorce has been previously granted

FACTS

In August 2018, Vicky Moss filed for divorce from her husband, Clay Moss, on the statutory ground of habitual cruel and inhuman treatment pursuant to Miss. Code Ann. § 93-5-1. Vicky presented evidence that Clay isolated her from friends and social activities, verbally degraded her appearance, habitually insulted her intelligence and values, accused her of adultery throughout the relationship, and after the separation, regularly made Vicky and the children fearful by coming to the family home in the middle of the night and knocking on windows. Part of the evidence of Clay's negative impact on the family involved an inappropriate relationship he had with a fifteen-year-old Malaysian girl that occurred during a family mission trip in Malaysia. Further, Clay repeatedly attacked the strength of Vicky's faith and used related manipulative tactics when the two discussed an irreconcilable differences divorce. Finally, Clay threatened suicide as a manipulative tactic to discourage Vicky from pursuing the divorce. The chancery court granted Vicky a divorce in December 2020, finding that Vicky presented sufficient evidence to establish the grounds for habitual cruel and inhuman treatment. Clay appealed.

ISSUES

Whether (1) the chancery court erred in granting Vicky a divorce on the ground of habitual cruel and inhuman treatment; (2) the chancery court abused its discretion in allowing Vicky's counselor to testify as an expert witness because Vicky failed to disclose a specific medical term in her interrogatory response for expert testimony; and (3) Clay's counterclaim for separate maintenance should be remanded because the chancery court erred in granting Vicky a divorce.

HOLDING

(1) Because Clay isolated Vicky from friends and social activities, verbally degraded her appearance, habitually insulted her intelligence and values, accused her of adultery throughout the relationship, and made Vicky and the children fearful by regularly visiting the family home and knocking on windows in the middle of the night, and because Clay's conduct was habitual and incessant, the totality of the circumstances created a reasonable apprehension of danger, rendering the relationship unsafe; thus, there was substantial evidence to support the chancery court's granting of the divorce on the ground of habitual cruel and inhuman treatment. (2) Because Vicky's interrogatory response provided sufficient notice of the counselor's testimony, and because spousal domestic abuse may be established through the reliable testimony of a single credible witness and the chancery court deemed both Vicky and her daughters' testimony credible, the chancery court did not abuse his discretion by allowing Vicky's counselor to testify. (3) Because the chancery court properly granted the divorce based on habitual cruel and inhuman treatment, a claim for separate maintenance was a moot issue. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2021-CA-00452-COA (Mar. 14, 2023)

En banc Opinion by Chief Judge Barnes

Hon. Haydn Judd Roberts (Rankin County Chancery Court)

Andrew Stephen Sorrentino for Appellant - Matthew Thompson & Chad Kenneth King for Appellee

Briefed by [Merritt Baria](#)

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WILLIAMS V. WILLIAMS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - VALUATION JUDGMENT - It is incumbent upon the parties, not the chancellor, to prepare the evidence needed to clearly make a valuation judgment; a valuation judgment will be upheld so long as there is some evidence to support the conclusion; a valuation judgment may be accomplished by adopting the values cited in the parties' financial disclosures, in the testimony, or in other evidence

FAMILY LAW - EVIDENCE - EXTRINSIC EVIDENCE - The chancellor is not permitted to go outside the record to look for better evidence

FACTS

Eric and Brittney Williams were married in 2014. In September 2019, Brittney filed for divorce after their minor child made an allegation of sexual abuse against Eric. Subsequently, Eric filed a counterclaim for divorce. An agreed temporary order was entered allowing Brittney exclusive use and possession of the marital residence with Eric paying for the mortgage, and Brittney paying for utilities and maintenance costs. In April 2021, both consented to divorce on the grounds of irreconcilable differences. The parties agreed Brittney would have physical custody of the three children subject to visitation while also sharing joint legal custody. The trial court was tasked with classifying and dividing the assets and debts of the parties, including the marital residence. Brittney testified that the parties had lived in the marital residence since it was built, but Eric testified that the property was purchased in 2011, and the marital residence was built in 2012. Around November 2018, the parties obtained a construction loan for an addition to the residence. Eric testified he was involved in the construction of the original marital residence and the addition. Furthermore, Brittney also testified that the value of the residence was \$150,000 and that the value she provided was based on having it appraised and not based on the closing disclosure. However, Eric testified the value of the residence at the time of trial to be \$189,000 based on an appraisal done after the addition of a bedroom and a sunroom was completed. According to Eric, the marital residence increased by \$39,000 due to the addition, but he had not been to the marital residence in approximately nineteen months, so he was unsure if it had depreciated in value. Additionally, Eric acknowledged that he had stated in his initial Rule 8.05 financial disclosure that the value was \$168,000 and that the closing disclosure had a value of \$150,000. Eric explained the discrepancy of the financial disclosure was a result of him flipping the "8" and flipping and inverting the "6", and he had still believed the true value to be \$189,000. Eric also acknowledged that a portion of the construction loan was used to pay for attorney's fees. The trial court found the value of the marital residence to be \$150,000 based on both Brittney's testimony and Eric's initial Rule 8.05 financial disclosure, while Eric's testimony that the residence was worth more than Brittney's submitted evidence was inadmissible. In May 2021, the trial court entered a final written judgment of divorce where Brittney was awarded exclusive use, possession, and ownership of the marital residence. The value of the residence was deemed to have a mortgage balance of \$69,000. To compensate for the disparity in the assets and debts awarded to each party, the trial court awarded Eric \$18,500 from equity in the marital residence. As a result, Eric filed a motion to alter or amend the judgement and cited the trial court's error in valuation of the marital residence. At the motion's hearing, the trial court noted that because the testimony had been some time ago, not every fact and every minute of testimony was remembered, but it did recall that Eric's evidence of appraisal was inadmissible. Furthermore, the trial court indicated that the only appraisal in evidence was the closing disclosure with a value of \$150,000 and denied Eric's motion. Eric appealed.

ISSUE

Whether the trial court erred in the valuation of the marital residence?

HOLDING

Because the trial court considered Brittney's testimony and Rule 8.05 financial disclosure indicating the residence to be worth \$150,000, because Eric's initial Rule 8.05 financial disclosure indicated the residence to be worth \$168,000 but the closing document appraised the residence to be \$150,000, because Eric's evidence that the residence was worth more was inadmissible, and because the parties are responsible for preparing evidence to determine a valuation judgment, the trial court did not err in the valuation of the marital residence.

Affirmed - 2021-CA-00758-COA (Mar. 14, 2023)
Opinion by Judge Greenlee
Hon. Vicki B. Daniels (Grenada County Chancery Court)
Jeffrey Birl Rimes for Appellant - Sabrina D. Howell for Appellee
Briefed by [Kayla Tran](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

SINGH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTION TO PROCEDURAL BAR - Under Miss. Code Ann. § 99-39-5(2), while a motion for post-conviction relief must be filed within three years following the entry of judgment of conviction, and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion, claims of unlawful probation or post-release supervision revocation are excepted from the three-year statute of limitations and are not time-barred

POST-CONVICTION RELIEF - POST-RELIEF SUPERVISION - PROBATIONER ABSCONDING - Under Miss. Code Ann. § 47-7-37.1, a probationer who fails to report to their supervising officer for six or more consecutive months is considered to have absconded from supervision

POST-CONVICTION RELIEF - POST-RELIEF SUPERVISION - IMPOSITION OF SENTENCE - Under Miss. Code Ann. § 47-7-37.1, if a court finds by a preponderance of the evidence that a probationer or a person under post-release supervision has committed a felony or absconded, then the court may revoke the probationer's probation and impose any or all of the sentence

FACTS

Tiven Singh pled guilty to one count of robbery in 2014 and was sentenced to serve fifteen years, with three years in prison and the remaining twelve years to be served on post-release supervision ("PRS"). On March 29, 2016, the trial court issued a warrant for Singh's arrest for allegations that he failed to report to the Mississippi Department of Corrections (MDOC) since August 2015, a violation of his PRS terms. In 2017, Singh was arrested. The trial court then held a revocation hearing and Singh admitted to violating his PRS terms. The trial court revoked Singh's PRS and ordered him to serve the remaining twelve years of his sentence in MDOC's custody. Singh filed a petition for post-conviction relief (PCR) and argued that his revocation hearing was untimely because he was detained for more than thirty days after being arrested for violating the terms of his PRS. Additionally, Singh argued that the trial court lacked the authority to require him to be imprisoned for the unserved remainder of his sentence. The circuit court held that Singh's PCR petition was untimely filed and thus denied it. The circuit court also held that, because Singh was on PRS and absconded supervision for six months or more, the trial court was permitted to impose all of Singh's sentence. Singh appealed.

ISSUES

Whether the circuit court erred (1) by denying Singh's PCR petition as time-barred and (2) by revoking his PRS and imposing the remainder of his sentence.

HOLDING

(1) Because Singh's PCR claim for PRS revocation was excepted from the three-year statute of limitations, the circuit court erred by denying Singh's PCR petition as time-barred. (2) Because Singh failed to report to his supervising officer for six or more consecutive months and was considered to have absconded from supervision, the circuit court did not err by revoking Singh's PRS and imposing the remainder of his sentence, even though Singh was detained for more

than thirty days before his revocation hearing took place. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2022-CP-00273-COA (Mar. 14, 2023)

Opinion by Judge McCarty

Hon. Robert P. Krebs (Jackson County Circuit Court)

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

Briefed by [Doug Reynolds](#)

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COURT OF APPEALS - CRIMINAL CASES

MASON V. STATE

CRIMINAL - FELONY

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - Under Miss. R. Evid. 702, a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue

EXPERT WITNESS - INDIGENT DEFENDANT - BASIC TOOL FOR ADEQUATE DEFENSE - For an indigent defendant to be entitled to public funds to retain an expert, the expert must be a basic tool of an adequate defense; to establish whether an expert is a basic tool for an adequate defense, courts must weigh (1) the private interest that is affected by the action of the state; (2) the governmental interest that is affected if the safeguard is provided; and (3) the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an erroneous deprivation of the affected interest if those safeguards are not provided

CRIMINAL LAW - INDIGENCY - USE OF EXPERT TESTIMONY - If the State relies on expert testimony alone to prove or corroborate an element of the crime, the defendant is entitled to an expert to assist in his defense and preparation for cross-examination, without which the defendant cannot receive a fair trial

CIVIL PROCEDURE - JURISDICTION - LOCATION OF OFFENSE - For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct occurs in the state or if the transmission that constitutes the offense either originates in this state or is received in this state

FACTS

State Detective Chip Logan with the Criminal Investigations Division of the DeSoto County Sheriff’s Department traced evidence of child pornography on Robert Mason’s computer server in Cordova, Tennessee. Logan alerted the Memphis Police Department and obtained an investigative search warrant of Mason’s home. Mason admitted that the username associated with one of the laptops found during the search was “KG,” short for “Knott Given,” a term Logan identified as a reference to child pornography. The computer was seized by the Memphis Police Department and sent to the DeSoto County Sheriff’s Department in Mississippi by Logan. Logan subsequently obtained a search warrant to examine the computer files and found thousands of files related to child pornography, including the evidence Logan discovered on Mason’s computer server. A few days after the laptop search, the State issued an arrest warrant in DeSoto County, and Mason complied. Before trial, Mason filed a motion for funding to appoint a computer and software expert witness to assist with his defense. Mason was deemed indigent and defense counsel identified the need for an expert to determine the forensic pathways and algorithms, as well as the accuracy of the data presented to the jury. The trial court denied the motion because the State did not intend to rely on expert testimony to prove any element of the alleged crime. At trial, the State introduced Logan as the sole witness for the State’s case-in-chief. Logan and the State insisted that he was not an expert witness. Logan did not hold a degree in the field but had received specialized training and was licensed to perform the investigative work. Logan previously testified in state and federal court concerning sharing child

pornography online, but Logan admitted that he cannot be qualified as an expert because it doesn't take an expert to use these programs. Logan subsequently offered testimony that was highly technical, scientific, and complex. Logan testified to several terms that a layman would be unable to hold an opinion on, such as torrents, write blockers, file paths, digital fingerprints on manipulated or transferred files, and the correlation of bestiality and child pornography, among other highly specialized, scientific, and technical terms. Logan and the State downplayed his lack of expertise at trial, but Logan admitted that his knowledge, skill, and experience in computers, networks, and peer-to-peer software went beyond that of a layman. Defense counsel objected repeatedly to the testimony as requiring specialized knowledge of an expert, but the trial court overruled such objections. The trial court found Mason guilty and sentenced him to serve ten years with ten years of post-release supervision. Mason appealed.

ISSUES

Whether the trial court erred in (1) denying Mason's motion for funds to retain an expert and (2) permitting expert testimony without designating the witness as an expert.

HOLDING

(1) Because Logan's specialized training and licensure for investigating digital child pornography showed the technical nature of his job, the trial court should have designated Logan as an expert under Miss. R. Evid. 702, because Mason's case was based entirely on the use of computers, software, and specialized networks, because any failure to provide Mason funds for an expert witness prohibited Mason from preparing his defense, properly cross-examining Logan as the State's witness, and from testifying in support of Mason's defense, further because the State relied upon the highly specialized knowledge of Logan as their sole witness at trial, and because not having an expert hindered Mason's jurisdictional challenge, Mason was deprived of a basic tool for an adequate defense and a fundamentally fair trial, and the trial court erred in denying Mason's motion for funds to retain an expert. (2) Because Logan provided testimony that included highly specialized and technical knowledge surrounding the investigation of child pornography, and because Logan relied upon information from other sources with no personal knowledge, the State was given a procedural advantage of using expert testimony without proper designation, and the trial court erred in permitting Logan's testimony without designating him as an expert witness. Therefore, the Court of Appeals reversed and remanded the judgment of the DeSoto County Circuit Court.

Reversed and Remanded - 2021-KA-00964-COA (Mar. 14, 2023)

Opinion by Chief Judge Barnes

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Thomas Simpson](#)

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NUNN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MENTAL EXAMINATIONS - COMPETENCY - Under Miss. R. Crim. P. 12.1, a presumption of mental competency exists; the defendant bears the burden to prove by substantial evidence he is mentally incompetent to stand trial; the defendant must have the ability to perceive and understand the nature of the proceedings, to communicate rationally with his attorney about the case, to recall relevant facts, and to testify in his own defense to be deemed mentally competent; the presence of a mental illness, defect, or disability alone is not grounds for finding a defendant incompetent to stand trial

CRIMINAL LAW - ENTRAPMENT - LACK OF PREDISPOSITION - Before a defendant can raise the defense of entrapment, he or she is required to show evidence of government inducement to commit the criminal act and a lack of predisposition to engage in the criminal act prior to contact with government agents

FACTS

In June 2021, John Nunn was found guilty of the “[sale], barter, transfer, manufacture, distribut[ion], or dispens[ation]” of more than two grams but less than ten grams of methamphetamine within 1,500 feet of a church. In January 2018, prior to Nunn’s arrest, law enforcement wired Carissa Sasso, a confidential informant, with an audio and video button cam to record her purchase of drugs from Nunn. After the video footage was reviewed and the substance Sasso purchased was confirmed as methamphetamine, Nunn was indicted and arrested. Before trial, Nunn’s attorneys filed a pre-trial motion and requested both a mental competency hearing and a psychiatric evaluation of Nunn. On two separate occasions, the circuit judge conducted a hearing to determine whether Nunn understood and appreciated the significance of the trial proceedings and had the ability to rationally aid in his defense. During the first hearing, after submitting Nunn’s medical records to the court, one of Nunn’s attorneys argued Nunn was mentally incompetent to stand trial because Nunn previously had received—and was still currently receiving—mental psychiatric treatment. However, another of Nunn’s attorneys stated that he had spoken with Nunn about the facts of the case and Nunn’s mental treatment. The attorney acknowledged that nothing in either his interactions or communications with Nunn had indicated Nunn lacked the competency to stand trial. The attorney further stated although the medical records indicated Nunn had dealt with several medical issues, nothing raised a doubt as to Nunn’s mental competency. Thereafter, the defense’s motion for a psychiatric evaluation of Nunn was denied. Prior to voir dire, the issue of Nunn’s competency was revisited in a second hearing where Nunn himself competently answered the circuit judge’s questions regarding his medication, his understanding of the trial proceedings, and the indicted charge against him. In addition, Nunn informed the circuit judge about his prior convictions, inquired about being tried as a habitual offender, and asked about his “veteran court treatment.” Following this, Nunn requested jury instruction on the defense of entrapment but was denied. At trial, Nunn testified he had a prior conviction for selling drugs, he frequently used drugs with Sasso and his brother, and he sometimes supplied the drugs they used. Nunn also testified he had an arrangement with Sasso to trade drugs for sex, and he agreed on cross-examination that he had therefore “transferred” or “distributed” methamphetamine to Sasso in exchange for sex. Nunn also stated that the interaction with Sasso in January 2018 was another “trade” with Sasso where he transferred or distributed drugs to her in exchange for sex. After trial, the circuit court sentenced Nunn as a nonviolent habitual offender to serve twenty-five years day for day. Nunn appealed.

ISSUES

Whether the circuit court erred by (1) denying Nunn’s request for a mental competency evaluation and by (2) failing to instruct the jury on the defense of entrapment.

HOLDING

(1) Because Nunn’s attorney acknowledged nothing in his interactions or communications with Nunn indicated a lack of competency during the first competency hearing and Nunn himself competently answered the circuit judge’s questions during the second hearing, there was no reasonable ground for the circuit judge to believe that Nunn lacked the mental competency to stand trial. (2) Because Nunn failed to show a lack of predisposition to commit the crime charged and to establish a prima facie case of entrapment, there was no abuse of discretion in the circuit court’s decision to not instruct the jury on the entrapment defense. Therefore, the Court of Appeals affirmed the judgment of the Prentiss County Circuit Court.

Affirmed - 2021-KA-01371-COA (Mar. 14, 2023)

Opinion by Judge Smith

Hon. Michael Paul Mills Jr. (Prentiss County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Danielle Love Burks (Att’y Gen. Office) for Appellee

Briefed by [Emilee Crocker](#)

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WAKEFIELD V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - VENUE - CRIMES IN MULTIPLE COUNTIES - Under Miss. Code Ann. § 99-11-19, when an offense is committed partly in one county and partly in another, or where the acts, effects, means, or agency occur in whole or in part in different counties, the jurisdiction shall be in either county in which said offense was commenced, prosecuted, or consummated, where prosecution shall be first begun

CRIMINAL LAW - ACCOMPLICE LIABILITY - ACCESSORY AFTER THE FACT - Miss. Code Ann. § 97-1-5(1) defines an accessory after the fact as one who concealed, received, or relieved any felon, or having aided or assisted any felon, knowing that the person had committed a felony, with intent to enable the felon to escape or to avoid arrest, trial, conviction, or punishment after the commission of the felony

CRIMINAL LAW - NATURE AND ELEMENTS OF CRIME - DIFFERENT OFFENSES IN SAME TRANSACTION - Whether a transaction results in the commission of one or more offenses is determined by whether separate and distinct acts made punishable by law have been committed

CRIMINAL LAW - ACCESSORY AFTER THE FACT - KNOWLEDGE OF OFFENSE - Under Miss. Code Ann. § 97-1-5, to be liable as an accessory after the fact, one must have had actual knowledge, at the time he relieved or assisted the principal, that the latter had committed a felony, or was an accessory before the fact to a felony; and such knowledge must be personal as distinguished from constructive

CRIMINAL LAW - INDICTMENT - INTENT OR KNOWLEDGE - Indictment adequately covers the issue of intent by alleging that defendant caused the injury “willfully”

EVIDENCE - ADMISSIBILITY - CRIME SCENE PHOTOGRAPHS - Photographs are deemed to have evidentiary value if admitted to: (1) aid in describing the circumstances of the killing and the corpus delicti, (2) aid in describing the location of the body and cause of death, and (3) supplement or clarify witness testimony

FACTS

On May 18, 2017, around 1:00 a.m., Dwan Wakefield, accompanied by Byron McBride and D’Allen Washington, drove his aunt’s Honda to Kroger where he planned to meet Charles Amos to sell him marijuana. Ebony Archie arrived at the same Kroger in her Camry fifteen minutes later and left her six-year-old sleeping son, Kingston, in the car while she went into the store. Kroger’s video surveillance of the parking lot showed McBride entered the Camry and drove off. The Madison County Sheriff’s Office (“MCSO”) later received a 911 call that a Camry was abandoned in Madison County. When MCSO Deputy Joel Evans arrived, he and another deputy approached the Camry and found Kingston in the fetal position on the rear passenger floorboard. Deputy Evans testified that he could see a large amount of blood on the back of Kingston’s shirt. Deputies called out to Kingston but received no response. Kingston’s left arm was behind his back, and his arm had no pulse. Dr. Mark Lavaughn, Chief Medical Examiner for the State, testified that Kingston was shot four times, and his manner of death was homicide. Law enforcement received a call from Honey Ates, Wakefield’s aunt, stating that he was driving her Honda that night. While the officers were at Honey’s home, Wakefield called her and told her that he was at a home in North Jackson. Wakefield was apprehended at gunpoint after officers set up a perimeter around the home. When interviewed by law enforcement, Wakefield waived his Miranda rights and spoke to officers without an attorney present. A recording and transcript of the interview were entered into evidence. From the beginning of the interview, Wakefield consistently named McBride as the person who stole the Camry and killed Kingston. Wakefield gave several versions of the story until he arrived at hanging out with Washington and McBride where he planned to meet Amos to sell marijuana. Washington was in the passenger seat and McBride was in the backseat of the Honda. While in the Kroger parking lot, the three men saw Archie pull into the parking lot and exit the Camry. Wakefield said that Archie was attractive, and McBride exited like he was there to meet Archie. Archie walked into the store and McBride walked past the Camry like he was going into the store. McBride returned to the Honda to get his phone and jacket. McBride told Wakefield and Washington that he was going to steal the Camry and go to Holmes County. Wakefield and Amos subsequently realized they were at different Kroger locations, and both men agreed to meet at a Wendy’s in Jackson. After meeting Amos, Wakefield pulled into a gas station before McBride called Wakefield to come get him because he was going to run out of gas. Wakefield said he heard McBride ask Kingston how old he was, and Kingston responded. McBride stated that he was “going to off” Kingston, meaning kill him.

Wakefield immediately tried to persuade McBride to drop Kingston off at a gas station unharmed and run, and McBride said, “All right.” Later that night, McBride called Wakefield again to say he was out of gas, sent his location, and Wakefield picked McBride up. McBride then told Wakefield and Washington that he shot Kingston six times. Wakefield passed Kroger, saw the law enforcement presence, and knew their presence was related to Kingston, but he kept driving. He drove McBride to his mother’s home, and Wakefield and Washington drove to Jackson where Washington’s brother lived. Wakefield deleted all of his text messages from that night. Wakefield was seventeen years old at the time of the crimes, so his case originated in the Madison County Youth Court. The youth court eventually transferred Wakefield’s case to the Madison County Circuit Court. The trial court returned a guilty verdict and sentenced Wakefield to twenty years for accessory after the fact to murder, fifteen years for accessory after the fact to kidnapping, and five years for accessory after the fact to auto theft, to run concurrent to the fifteen-year sentence. Wakefield filed a motion for judgement notwithstanding the verdict (JNOV), or, alternatively a new trial. The trial court denied the post-trial motion. Wakefield appealed.

ISSUES

Whether (1) the Madison County Circuit Court lacked jurisdiction over Wakefield’s case; (2) Wakefield’s three separate convictions under the same statute violated his right to protection against double jeopardy; (3) the evidence was insufficient to support the verdicts; (4) the verdicts were against the overwhelming weight of the evidence; (5) the indictment failed to charge an essential element of accessory after the fact; and (6) the trial court erred in admitting autopsy and crime scene photographs depicting the deceased victim.

HOLDING

(1) Because Wakefield picked up McBride in Madison County, because Wakefield knew that McBride had murdered Kingston in Madison County, and because Wakefield’s cell phone utilized towers in Madison County, the offenses were commenced, prosecuted, or consummated in Madison County, and Madison County Circuit Court had proper jurisdiction. (2) Because McBride committed multiple felonies, because Wakefield was an accessory after the fact to each of McBride’s felonies, and because Wakefield learned about each of McBride’s felonies at separate times, each felony constituted a separate unit of prosecution that allowed for multiple convictions under the same statute. (3) Because the State presented the jury with the video and transcript of Wakefield’s interview with the police, because the jury watched the video of Wakefield’s interview with the investigators, and because the jury was instructed on the elements of accessory after the fact to murder prior to deliberating, there was sufficient evidence for a rational juror to find Wakefield guilty of acting as an accessory after the fact to murder, to kidnapping, and to auto theft beyond a reasonable doubt. (4) Because the State presented sufficient evidence for a rational juror to find Wakefield guilty of accessory after the fact to murder, to kidnapping, and to auto theft beyond a reasonable doubt, the verdict was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. (5) Because Wakefield’s indictment contained the term “willfully,” because “willful” means to do an act intentionally, and because Wakefield failed to identify any prejudice in the presentation of his defense resulting from the wording in the indictment, Wakefield was provided sufficient notice of the charges against him. (6) Because the photographs aided testimony about the cause of death and location of Kingston’s body when it was found, because the photographs did not show Kingston’s face, head, gunshot wounds, or excessive blood, and because the State had to prove the underlying murder occurred in order to prove that Wakefield was an accessory after the fact to murder, the photographs were not used to inflame the passions of the jury and were admissible. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2021-KA-00187-COA (Mar. 14, 2023)

Opinion by Presiding Judge Carlton

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

George T. Holmes, Mollie Marie McMillin, Robert Shuler Smith (Pub. Def. Office) & *Pro Se* for Appellant - Allison Kay Hartman (Att’y Gen. Office) for Appellee

Briefed by [Kennedy Gerard](#)

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