

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 17, 2023***SUPREME COURT - CIVIL CASES*****JOE MCGEE CONST. CO. INC. V. BROWN-BOWENS****CIVIL - WRONGFUL DEATH**

TORTS - NEGLIGENCE - ELEMENTS - To prevail on a negligence claim, a plaintiff must establish by preponderance of the evidence each of the elements of negligence: duty, breach, causation, and injury

CIVIL PROCEDURE - PLEADINGS - SUMMARY JUDGEMENT- Under Miss. R. Civ. P. 56(c), summary judgment is proper when there are no genuine issues of material fact such that the moving party is entitled to judgement as a matter of law

CIVIL PROCEDURE - SUMMARY JUDGEMENT - BURDEN OF PROOF - In order for the moving party to be entitled to summary judgement as a matter of law, the party must show a complete failure of proof on an essential element of the claim or defense; speculation does not defeat summary judgement

FACTS

The Mississippi Department of Transportation (“Department”) hired Joe McGee Construction Company, Inc. (“McGee”) for a road construction and bridge replacement project on Highway 245 in Lee County. The Department designed the temporary traffic control plan for the project, which provided for the placement of temporary traffic signs. In May 2018, McGee subcontracted with Riverside Traffic Systems, Inc. (“Riverside”), for the placement of the signs and barricades as required by the traffic control plan. In June 2018, Hattie Brown drove down the closed portion of the highway and collided with a stationary crane. Mississippi Highway Patrol Trooper Jonathan Ragan responded to the scene to investigate. Ragan’s report states that Brown’s vehicle collided with the barricade and traveled 200 yards, colliding head on with a crane parked on a bridge and noted that there was adequate signage of the road being closed with barricades across both lanes. In November 2018, Dianne Brown-Bowens, Brown’s daughter, filed a wrongful death suit against McGee and later amended the complaint to include the Department and Riverside as defendants under claims of negligence and strict liability, seeking punitive damages. In December 2020, the department filed a Motion for Summary Judgement. Brown-Bowen responded, asserting that summary judgement was premature and that there was genuine issue of material fact and attached several exhibits, including the affidavit of Jeffery Armstrong, a professional engineer who performs forensic engineering analyses on matters involving traffic and transportation engineering, including analyses of temporary traffic control. The Department moved to strike Armstrong’s affidavit as untimely and improper because it offered expert opinions from an individual who had not been designated an expert and whom no expert interrogatory response was provided. In May 2021, McGee Construction filed a motion for summary judgement, asserting that it had provided legally sufficient notice to motorists, including Brown, breached no duty owed, and that it was not negligent because none of its actions proximately caused the accident. In July 2021, a hearing was held regarding the motion. After the arguments, the trial court entered an order granting Riverside’s motion for summary judgement and granted in part and denied in part the Department’s and McGee’s motions for summary judgement, ruling that the motions were denied as to Brown-Bowen’s negligence claim but granted as to her claims for strict liability and for punitive damages. The trial judge determined that Brown-Bowen had “presented sufficient evidence to establish the basis of a government entity’s duty to warn and that Armstrong’s affidavit established a breach of that duty by offering expert testimony as to the Department’s failure to comply with the traffic control plan. The court also determined that a sufficient basis for the element of causation and genuine issues of material facts still exist. The Department and McGee petitioned for interlocutory appeal.

ISSUES

Whether the trial court erred by denying in part the motion for summary judgement.

HOLDING

Because Brown-Bowens failed to present any evidence that either party, by act or omission, contributed to the death of Hattie Brown, and because no one could do more than speculate about causation to prove a claim of negligence against the Department and McGee Construction, summary judgement was proper. Therefore, the Supreme Court reversed and rendered the judgement of the Lee County Circuit Court.

DISSENT

Presiding Justice Kitchens, joined by Presiding Justice King, argued that the plaintiff presented sufficient evidence to survive summary judgement. He disagreed with the majority that no competent summary judgement evidence in the record supports any breach of any duty on the part of the Department or McGee. Viewing the evidence in the light most favorable to the plaintiff, Justice Kitchen's agreed that the trial judge determined that enough evidence was presented to survive summary judgement.

Reversed & Rendered - 2021-IA-01405-SCT (Aug. 17, 2023)

En Banc Opinion by Justice Coleman - Dissent by Justice Kitchens

Hon. John R. White (Lee County Circuit Court)

Michael Wayne Baxter & Michael Madison Taylor Jr. for Appellant - Wilbur O. Colom for Appellee

Consolidated with:

Reversed & Rendered - 2021-IA-01406-SCT (Aug. 17, 2023)

Hon. John R. White (Lee County Circuit Court)

Chris H. Deaton for Appellant - Wilbur O. Colom for Appellee

Briefed by [Hayward Gordon](#)

Edited by [Nivory Gordon](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

LOBLOLLY PROPS. LLC V. LE PAPILLON HOMEOWNER'S ASS'N INC.

CIVIL - REAL PROPERTY

PROPERTY - RESTRICTIVE COVENANTS - ENFORCEABILITY - Restrictions placed by the grantor on the use of property conveyed will be enforced if the intent to create them is clear, and if they are not contrary to law or public policy and are reasonable; if a covenant is a real covenant, it is said to run with the land

PROPERTY - RESTRICTIVE COVENANTS - CONSTRUCTIVE NOTICE - A prior recorded deed gives a subsequent grantee constructive notice of that deed and its provisions; a subsequent purchaser or creditor dealing with a piece of property who has notice of a prior claim or equity, or of facts, which if followed up, will discover the truth, are put under a duty to make the investigation

PROPERTY - RESTRICTIVE COVENANTS - HOA FEES- Homeowners' Association covenants run with the land and can be enforced by subsequent assignees or successors in title to the original parties

FACTS

In February 2008, Chattel Group, the original owners of the subject lots, executed a Deed of Trust to First State Bank. In December 2008, Chattel Group filed a Declaration of Covenants, Conditions and Restrictions that governed development by Le Papillon Homeowner's Association Inc. ("Le Papillon"), which stated that the nonpayment of homeowners' association ("HOA") fees would result in a continuing lien on the property. Chattel Group subsequently defaulted on the Deed of Trust, and the Deed's trustee conducted a nonjudicial foreclosure on several lots in the Le Papillon development and conveyed the subject lots to First State Bank. Then, in January 2018, Loblolly Properties LLC ("Loblolly") purchased the subject lots from First State Bank through a Special Warranty Deed that included in the conveyance that the property was "subject to any and all Covenants and Restrictions of record." Approximately one year later, Loblolly sent Le Papillon payment for HOA dues on the subject lots. Le Papillon returned the payment

claiming it did not cover the total amount of HOA dues owed. Loblolly responded stating that it thought the covenants were extinguished when the foreclosure occurred and, therefore, did not have an obligation to adhere to the covenants or pay any dues. In July 2019, Le Papillon filed a Notice of Lien for Loblolly's unpaid HOA dues. As a result, Loblolly filed a complaint against Le Papillon seeking declaratory judgment to set aside the Notice of Lien and declare the subject lots were not bound by covenants and restrictions. In July 2020, Loblolly moved for partial summary judgment and asked the chancery court to order the covenants extinguished by the nonjudicial foreclosure. The chancery court denied the motion and held that even if the covenants had been extinguished by the foreclosure, the covenants applied to the subject lots through the Special Warranty Deed. In April 2021, Le Papillon filed for summary judgment. The chancery court granted the motion, which was later affirmed by the Court of Appeals. Loblolly petitioned for writ of certiorari.

ISSUE

Whether the foreclosure sale extinguished covenants that were filed after the Deed of Trust.

HOLDING

Because the HOA dues ran with the land, because Loblolly had sufficient notice of the covenants, because the covenants were recorded before Loblolly purchased the property, because the language of the Special Warranty Deed and the chain of title available for investigation at the chancery clerk's office put Loblolly on notice, and because Loblolly attempted to pay the HOA fees, the foreclosure sale did not extinguish covenants that were filed after the Deed of Trust. Therefore, the Supreme Court affirmed the judgments of the Lamar County Chancery Court and the Court of Appeals.

DISSENT

Justice Coleman argued that because the covenants were recorded after the Deed of Trust, the Deed of Trust had priority, and the foreclosure extinguished the covenants. He also argued the Special Warranty Deed could not revive the 2018 covenants that did not exist when the original Deed of Trust was entered, and any notice of the covenant did not overcome the fact that the foreclosure subsumed it.

Affirmed - 2021-CT-00767-SCT (Aug. 17, 2023)

En Banc Opinion by Justice Ishee - Dissent by Justice Coleman

Hon. Sheila Havard Smallwood (Lamar County Chancery Court)

Joseph Michael Gianola Jr. for Appellant - Carey R. Varnado & Matthew William Lawrence for Appellee

Briefed by [John Walker Webb](#)

Edited by [Kayla Tran](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

UNIV. OF MISS. MED. CTR. V. AYCOCK

CIVIL - MEDICAL MALPRACTICE

MISS. TORT CLAIMS ACT - NOTICE - GOVERNMENTAL ENTITY - Miss. Code Ann. § 11-46-11(1) states that after all procedures within a governmental entity have been exhausted, any person having a claim under this chapter shall proceed as he might in any action at law or in equity, except that at least ninety days before instituting suit, the person must file a notice of claim with the chief executive officer of the governmental entity

MISS. TORT CLAIMS ACT - NOTICE REQUIREMENTS - JURISDICTIONAL & WAIVABLE - The notice requirements of Miss. Code Ann. § 11-46-11 are mandatory, but not jurisdictional; therefore, the notice requirements are subject to waiver, estoppel, and equitable tolling

CIVIL PROCEDURE - EQUITABLE ESTOPPEL - ELEMENTS - Equitable estoppel has three elements: (1) belief and reliance on some representation; (2) change of position, as a result thereof; (3) detriment or prejudice caused by the change of position

CIVIL PROCEDURE - EQUITABLE ESTOPPEL - ISSUE OF FACT - When there is evidence to support a finding that the plaintiff reasonably relied on the actions of the defendant to his detriment, the issue becomes a question for the trier of fact

FACTS

In February 2020, Jackie Aycock underwent surgery on his jaw at the University of Mississippi Medical Center (“UMMC”) and sustained severe permanent injury to his left arm and shoulder. Jackie and his wife, Debra, (“the Aycocks”) subsequently sought to sue UMMC pursuant to the Mississippi Tort Claims Act, alleging Jackie was injured as a result of UMMC’s negligence. Before filing suit, the Aycocks sent a notice of claim letter to four UMMC executives, none of whom were UMMC’s chief executive officer (“CEO”). An UMMC employee forwarded the notice of claim to eight other administrative employees. Following receiving the notice of claim, UMMC informed the Aycocks that it had received the notice of claim and that no action taken by UMMC, including investigation, defense, settlement, or adjustment of the claim, was to be construed as a waiver of any rights. After investigating, UMMC denied the Aycocks’s claim. More than a year after the surgery, the Aycocks sued UMMC for negligence in the Hinds County Circuit Court. UMMC filed a motion for summary judgment arguing that the Aycocks failed to serve UMMC’s CEO with a notice of claim as required by Miss. Code Ann. § 11-46-11(2)(a)(ii). UMMC further argued that it was immune from the Aycocks’s claims because the statute of limitations had since run. UMMC submitted an affidavit in support of its motion for summary judgment stating that LouAnn Woodard was its CEO. It was undisputed that Woodard was not served a notice of claim. In discovery, UMMC produced a hospital administration hierarchy chart that did not identify anyone as CEO. UMMC then produced a Health Organizational Chart that listed three officers as CEO, but stated that none of the three were proper targets for service of notice. The Aycocks argued that the doctrines of waiver and equitable estoppel precluded UMMC from claiming that it did not receive proper notice of the claim because the Aycocks served notice upon four UMMC executives, one of whom the Aycocks believed in good faith was UMMC’s CEO, and UMMC sent a letter acknowledging receipt of the notice of claim. The circuit court denied UMMC’s motion for summary judgment. UMMC petitioned for interlocutory appeal.

ISSUE

Whether the circuit court erred by denying UMMC’s motion for summary judgment.

HOLDING

Because the Aycocks’s failure to provide notice of claim to Woodard was subject to waiver and equitable estoppel, because there was an issue of fact regarding whether equitable estoppel applied to the Aycocks’s claims because UMMC’s actions could have constituted representation that it had received the Aycocks’s notice of claim and then changed its position by filing a motion for summary judgment claiming UMMC’s CEO did not receive notice thereby barring the Aycocks’s claims and resulting in prejudice, and because if waiver or equitable estoppel were found then the Aycocks’s claims would not have been time-barred by the statute of limitations, the circuit court did not err by denying UMMC’s motion for summary judgment. Therefore, the Supreme Court affirmed and remanded the judgment of the Hinds County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Justice Griffis agreed that the Aycocks failed to comply with the mandatory service of notice requirements of Miss. Code Ann. § 11-46-11(1), but argued that the Aycocks’s claims should have been dismissed because there were no genuine issues of material fact regarding equitable estoppel or waiver. He argued that an adequate search could have identified UMMC’s CEO, and the response letter to the Aycocks did not misrepresent any facts and said that no act should have been construed as a waiver.

Affirmed & Remanded - 2022-IA-00030-SCT (Aug. 17, 2023)

Opinion by Justice Coleman - Concurrence in Part and Dissent in Part by Justice Griffis

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

Whitman B. Johnson III for Appellant - Carey R. Varnado & Matthew William Lawrence for Appellees

Briefed by [Isabella Escobedo](#)

Edited by [Kennedy Gerard](#) & [Ashley House](#)

[Click here to view the full opinion](#)

SUPREME COURT - ORDERS

IN RE: LOCAL RULES

EN BANC ORDER

ORDER

This en banc Order by the Supreme Court, made in consideration of the Twenty-Second Circuit Court District's motion, approved a Local Rule for the Twenty-Second Circuit Court District. The purpose of Rule 1 is to establish a procedure for the appointment of counsel for indigent criminal defendants pursuant to Miss. R. Crim. P. 7.2(a)(1). Rule 1 addresses topics such as orders of appointments, appointments of public defenders, appointments of private attorneys, compensation, expenses, continuing legal education, continuity of appointments, and notice of appointments. For example, Rule 1(b) states that in counties that have a public defender system, the public defenders shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. However, if the public defenders cannot represent the defendant, a private attorney shall be appointed. Rule 1(c)(1) then states that appointments of attorneys shall be made on an impartial and equitable basis and shall be distributed on a rotation system. Furthermore, the cases shall be assigned to attorneys of sufficient experience, skill, and competence to render effective assistance of counsel to defendants. Lastly, Rule 1(c)(3) states that the Circuit Court will attempt to appoint attorneys from the court-appointed attorney list on a rotational basis. However, the Circuit Court has sole discretion to make exceptions due to issues such as conflicts of interest, geographical considerations, and the nature and complexity of the cases. Rule 1 became effective on August 10, 2023.

[Exhibit A](#), referenced in and attached to the Order, shows Rule 1 of the Local Rules for the Twenty-Second Circuit Court District.

Ordered - 89-R-99015-SCT (Aug. 10, 2023)

En Banc Order by Presiding Justice Kitchens

Briefed by [Ramsey Thrasher](#)

Edited by [Emilee Crocker](#) & [Ashley House](#)

[Click here to view the full opinion](#)

SUPREME COURT - CRIMINAL CASES

STUART V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - PRO SE REPRESENTATION - WAIVER & ADEQUATE WARNING - An analysis of proper waiver of counsel or adequate warning about proceeding pro se is not necessary when a defendant functionally has counsel throughout trial in the form of hybrid representation

CRIMINAL PROCEDURE - RIGHT TO COUNSEL - HYBRID REPRESENTATION - A defendant who receives hybrid representation is never fully without the assistance of counsel and is not left to their own defense

CRIMINAL PROCEDURE - HYBRID REPRESENTATION - FACTORS - The factors considered in determining whether a defendant received hybrid representation are (1) the defendant's accessibility to counsel, (2) how often the defendant consults with counsel up to the point of the request, (3) the stage of trial at which the defendant requests a participatory role in their defense, (4) the magnitude of the role the defendant desires to assume, (5) whether

the trial court encourages immediate and constant accessibility of counsel, and (6) the nature and extent of both substantive and procedural assistance of counsel which has been provided up to the point of the request

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REFUSAL - A court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - ACCIDENT INSTRUCTION - A court does not abuse its discretion by denying an accident instruction when the defendant fails to present a sufficient foundation in the evidence for the instruction

FACTS

In May 2017, a woman discovered that her boyfriend, Larry Stuart, had filmed her daughter showering. The woman reported the video to the Lamar County Sheriff's Department. Stuart was indicted in November 2018 for filming the daughter in violation of her expectation of privacy pursuant to Miss. Code Ann. § 97-29-63(1)(a). The trial court appointed Austin Silkman of the public defender's office to represent Stuart. Silkman resigned from the office and Scotty Chabert was substituted as Stuart's counsel. Stuart failed to appear at trial in August 2019. In 2021, the trial court appointed Jack Denton to represent Stuart after Chabert was allowed to withdraw. Stuart was scheduled to enter a guilty plea in May 2022 but instead advised the trial court that he was dissatisfied and unable to communicate with Denton. The trial court gave Stuart the option to keep Denton as counsel or represent himself pro se. Stuart told the trial court that he would proceed pro se. Stuart later appeared with attorney Robert Whitacre and asked the trial court to appoint Whitacre to represent him. The trial court denied the request holding that Stuart had exhausted the court's appointment. However, the trial court appointed Whitacre as second-chair advisory counsel. At trial, Whitacre submitted an accident instruction, which the trial court denied. Stuart was convicted and sentenced to five years in custody. Whitacre filed post-trial motions, withdrew as Stuart's counsel, and requested that the Office of Indigent Appeals be appointed to represent Stuart on appeal. Stuart's motion for judgment notwithstanding the verdict or, alternatively, a new trial was denied. Stuart appealed.

ISSUES

Whether the trial court erred (1) by denying Stuart's constitutional right to counsel and (2) by denying Stuart's proposed accident jury instruction.

HOLDING

(1) Because Stuart appeared to have access to and assistance of counsel, both procedurally and substantively throughout proceedings, the trial court did not err by denying Stuart's constitutional right to counsel. (2) Because Stuart failed to present a sufficient foundation of evidence for his proposed accident instruction, the trial court did not err by denying Stuart's proposed accident jury instruction. Therefore, the Supreme Court affirmed the judgment of the Lamar County Circuit Court.

Affirmed - 2022-KA-00585-SCT (Aug. 17, 2023)

Opinion by Justice Griffis

Hon. Anthony Alan Mozingo (Lamar County Circuit Court)

George T. Holmes & Mollie M. McMillin (Pub. Def. Office) for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Joshua Arias](#)

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

[Click here to view the full opinion](#)

HOBBY V. OTT

CIVIL - REAL PROPERTY

PROPERTY - EASEMENTS - EASEMENT BY NECESSITY - An easement by necessity requires proof that (1) the easement is necessary, (2) the dominant and servient estates were once part of a commonly owned parcel, and (3) the implicit right-of-way arose at the time of severance from the common owner

PROPERTY - EASEMENT BY NECESSITY - BURDEN OF PROOF - The party seeking an easement by necessity has the burden of proof and must establish that they are entitled to a right of way across another's land

PROPERTY - EASEMENTS - ALTERNATE ROUTES - Where other alternative routes exist, courts may grant an easement over the neighboring property if it is the only reasonably necessary alternative available

PROPERTY - EASEMENTS - DETERMINING NECESSITY - Necessity is judged by whether the expense of an alternative route would involve disproportionate expense and inconvenience, or whether a substitute can be furnished by reasonable labor or expense; solely stating that the alternative route seems like it would be very expensive, longer, or less convenient is not sufficient to award an easement by necessity

FACTS

In 1941, E.B. Taylor received a deed for real property that adjoined a public roadway. Between 1969 and 1970, Taylor subdivided his property into four separate parcels and deeded all four to various individuals, and also granted the South Mississippi Electric Power Association a right-of-way easement from the public road over a strip of his land to build and keep power lines. Hazel Williams had been deeded one of the four parcel deeds from Taylor, and later, another of the four parcels was conveyed to W. Orval Williams and Hazel Williams. In 1994, another one of the four parcels was conveyed entirely to Michael and Regina Hobby (“the Hobbys”). After W. Orval and Hazel Williams died, their daughters Wanda Ott and Peggy Phillips acquired both parcels. Upon the vesting of their interests, Ott and Phillips's parcels were landlocked with no access to a public road. Ott and Phillips claimed to unsuccessfully request permission for ingress and egress from various owners of the neighboring parcels. In 2019, Ott and Phillips filed a complaint seeking to establish an easement of necessity and right of way against the Hobbys. Ott and Phillips's complaint alleged that an easement across the Hobbys's land was the only convenient and feasible route of access to the public road. Ott and Phillips sought to have the chancery court enjoin the Hobbys from interfering with their use of the easement and from setting up any type of obstruction. The Hobbys responded that there were other real properties between Ott and Phillips's properties and the public roadway. The evidence presented at trial showed at least three alternate routes, two of which were also part of Taylor's former commonly owned property, and neither required utilizing the Hobbys's property. At trial, Ott and Phillips presented a registered forester that testified that the powerline easement would not be the most feasible or convenient route because the property would be wet and have standing water. The chancery court granted Ott and Phillips an easement over the Hobbys's land concluding that such an easement was necessary, and alternative routes would have involved disproportionate expense and inconvenience. The Hobbys appealed.

ISSUE

Whether the chancery court erred by granting Ott and Phillips an easement across the Hobbys's property.

HOLDING

Because Ott and Phillips had a possible alternative route to access their properties that would not have required utilizing the Hobbys's property, and because Ott and Phillips failed to provide any specific evidence of the expenses that would be required to obtain access to their properties by an alternative route that did not utilize the Hobbys's property, the chancery court erred by granting Ott and Phillips an easement across the Hobbys's property. Therefore, the Court of Appeals reversed and rendered the judgment of the George County Chancery Court.

Reversed & Rendered - 2021-CA-01305-COA (Aug. 15, 2023)

Opinion by Judge Smith
Hon. Tanya L. Hasbrouck (George County Chancery Court)
A. Scott Cumbest & Ashlee E. Cole for Appellants - G. Charles Bordis IV for Appellees
Briefed by [Jonathan Gandara](#)
Edited by [Kennedy Gerard](#) & [Ashley House](#)

[Click here to view the full opinion](#)

PRITCHETT V. MISS DEP'T OF EMP. SEC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY CONCLUSIONS - An agency's conclusions must remain undisturbed where there is substantial evidence to support those conclusions; it is the role of the agency to determine the weight of the evidence and the credibility of the witnesses

EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - VOLUNTARY ABANDONMENT - An employee who voluntarily abandons their job without good cause while not otherwise at risk of termination does not qualify for unemployment benefits

EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - OVERPAYMENT OF BENEFITS - An overpayment of benefits occurs when a person receives benefits and is later found to be disqualified or ineligible for any reason, including a redetermination or reversal by the department or the courts of a previous decision to award such person benefits; the claimant must repay the overpayment subject to one-percent interest per month on the unpaid balance until repaid

FACTS

Harrah's Casino employed Cindy Pritchett as a guest room attendant for seven years. Near the end of a shift in May 2020, Pritchett refused to clean her two remaining assigned rooms. Pritchett's supervisor informed her that failure to fully perform her job duties would constitute job abandonment. Pritchett's supervisor claimed that Pritchett provided no reasonable explanation for her inability to complete her assigned duties, besides the fact that she was now paid hourly instead of per room. Conversely, Pritchett alleged that she did not abandon her job because she told her supervisor that she was experiencing COVID-19 symptoms. Pritchett alleged that she requested her supervisor get another employee to clean the remaining rooms because she was sick. Pritchett did not seek medical treatment for her symptoms. After leaving Harrah's Casino, Pritchett took a previously scheduled two-week vacation and then returned to work. Upon her return, Pritchett was escorted from the premises and informed of her termination. The Mississippi Department of Employment Security ("MDES") initially awarded Pritchett unemployment benefits but denied further benefits after determining that Pritchett voluntarily abandoned her job. Pritchett appealed the denial of benefits to an Administrative Law Judge ("ALJ"). The ALJ found in favor of Harrah's Casino, finding that Pritchett voluntarily abandoned her job while at no threat of discharge. Pritchett incurred a total of \$21,821.00 in benefits from the MDES from the time she was terminated until she received an adverse decision from the ALJ. As such, the ALJ ordered that Pritchett repay the assessed overpayment of the benefits she received. Pritchett appealed the ALJ's decision to the MDES Board of Review, which affirmed the ALJ's decision. Pritchett then appealed to the George County Circuit Court, which also affirmed the decision. Pritchett appealed.

ISSUES

Whether the circuit court erred in finding that Pritchett (1) left work voluntarily and without good cause and (2) was not entitled to unemployment benefits.

HOLDING

(1) Because there was testimony that Pritchett left work before she finished cleaning her two remaining rooms despite her supervisor telling her that leaving work would constitute abandonment, and because the evidence supported that Pritchett voluntarily abandoned her duties without cause while not otherwise at risk of termination, the circuit court did not err in finding that Pritchett left work voluntarily and without good cause. (2) Because Pritchett left her job voluntarily

without good cause thereby abandoning her job, the circuit court did not err in finding that Pritchett was not entitled to unemployment benefits. Therefore, the Court of Appeals affirmed the judgment of the George County Circuit Court.

Affirmed - 2022-CC-00808-COA (Aug. 15, 2023)

Opinion by Judge McCarty

Hon. Kathy King Jackson (George County Circuit Court)

Pro se for Appellant - Albert B. White for Appellee

Briefed by [Thomas Andersen](#)

Edited by [Kayla Tran](#) & [Ashley House](#)

[Click here to view the full opinion](#)

WHEELER V. MISS. LIMESTONE CORP.

CIVIL - WORKERS' COMPENSATION

EMPLOYMENT LAW - WORKERS' COMPENSATION - LACK OF SUBJECT MATTER JURISDICTION - Subject matter jurisdiction cannot be waived and if a court fails to have subject matter jurisdiction over a claim, it must dismiss the action

EMPLOYMENT LAW - WORKERS' COMPENSATION ACT - SUBJECT MATTER JURISDICTION - Miss. Code Ann. § 71-3-5 states that an extraterritorial employee is entitled to compensation when he sustains personal injuries outside Mississippi, while acting within the scope of his employment, if he has been hired or is regularly employed in Mississippi

EMPLOYMENT LAW - MISSISSIPPI'S WORKERS' COMPENSATION COMMISSION - SUBJECT MATTER JURISDICTION - The Workers' Compensation Commission does not have subject matter jurisdiction over an out-of-state claim simply because the employer has a workers' compensation policy in Mississippi

FACTS

Danny Wheeler, a Tennessee resident, was employed by Mississippi Limestone Corporation ("Mississippi Limestone") for over twenty-five years, where he conducted work outside of Mississippi. While on the job in Louisiana, Wheeler sustained a deep cut which evolved into an infection. Wheeler was later hospitalized and received physical therapy which resulted from his injuries. From September 2020 until March 2021, following his injuries, Mississippi Limestone continued to pay Wheeler his regular salary even though he was not working. Wheeler testified that, during that time, the owner stated that Wheeler should retire. In February 2021, Wheeler filed a petition to controvert with the Mississippi Workers' Compensation Commission ("Commission"). Wheeler alleged in his complaint that Mississippi Limestone assumed liability of his injuries since it obtained workers' compensation insurance, which he contended was protected under Miss. Code Ann. § 71-3-5. Mississippi Limestone and its carrier never filed an answer and failed to appear at the hearing in October 2021. Following the same hearing, the administrative judge ("AJ") dismissed Wheeler's claim for lack of subject matter jurisdiction. The AJ stated that since Wheeler was not hired in Mississippi nor did he regularly conduct business in Mississippi, the Commission did not have subject matter jurisdiction to hear his claims. Following the dismissal, Wheeler filed a notice of appeal.

ISSUES

Whether the Commission erred in (1) dismissing Wheeler's claim for lack of subject matter jurisdiction and (2) finding that Mississippi Limestone did not assume liability for Wheeler's injuries under Mississippi Workers' Compensation Law.

HOLDING

(1) Because Wheeler was not hired or regularly working in Mississippi, the Commission lacked subject matter jurisdiction to hear his claim. (2) Because Wheeler was an out-of-state worker beyond the scope of the Workers' Compensation Law, Mississippi Limestone did not assume liability for Wheeler's injury by securing a workers' compensation insurance

policy for its Mississippi employees. Therefore, the Court of Appeals affirmed the decision of Mississippi Workers' Compensation Commission.

Affirmed - 2022-WC-00534-COA (Aug. 15, 2023)

Opinion by Presiding Judge Wilson

Mississippi Workers' Compensation Commission

Christopher Hederi Neyland for Appellant - Mildred Lena Sabbatini for Appellees

Briefed by [Allie Zaring](#)

Edited by [Kara Edwards](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

COURT OF APPEALS - POST-CONVICTION RELIEF

RAMSEY V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTORY BARS - SUCCESSIVE MOTIONS - A second motion for post-conviction relief that reiterated the same challenge to a revocation decision as a former motion for post-conviction relief is statutorily barred as successive

POST-CONVICTION RELIEF - SUCCESSIVE MOTIONS - EXCEPTIONS - An inmate may not relitigate an issue that has already been decided; Miss. Code Ann. § 99-39-23(6) only allows a successive writ if the argument presented falls under one of the exceptions and has not been previously argued and a decision rendered on its merits by the trial court

FACTS

In 2019, Jeffery Ramsey pled guilty to three separate charges of felony driving under the influence and was sentenced to a total of thirty years in the custody of the Mississippi Department of Corrections (“MDOC”). The circuit court ordered the first six and one-half years to be served incarcerated and the remaining twenty-three and one-half years to be suspended. Ramsey was released on parole in June 2019. A few months later, Ramsey was arrested for a new driving under the influence charge. Ramsey was held in a detention center and then returned to the custody of MDOC. After a meeting with a member of the parole committee in November 2019, Ramsey’s parole was revoked. In June 2021, Ramsey filed a motion for post-conviction collateral relief (“PCR”), claiming that his due process rights were violated because his parole was illegally revoked since he had not been convicted of a felony at the time of revocation. Ramsey provided no documents to support his claims. In December 2021, the circuit court dismissed Ramsey’s PCR motion as successive and barred by Miss. Code Ann. § 99-39-23(6). In the circuit court’s dismissal, it cited two prior PCR motions Ramsey filed that also challenged his convictions and sentences that he pled guilty to in 2019. On one driving under the influence charge, one of Ramsey’s claims was that his parole was unlawfully revoked, but his appeal was dismissed for failure to file an appellant brief. On another driving under the influence charge, Ramsey filed substantially the same PCR motion challenging the convictions. However, in that PCR motion, Ramsey included a supplemental brief claiming his parole was unlawfully revoked. Ramsey also attached a document providing that his parole was revoked by all the five board members in a hearing, noting that based on the evidence presented, it was more likely than not that Ramsey violated the law. The chancery court dismissed Ramsey’s second PCR motion, and Ramsey did not appeal its dismissal. In Ramsey’s third driving under the influence charge, on which Ramsey’s current appeal was based, the circuit court dismissed Ramsey’s PCR motions as successive and found that Ramsey did not meet his burden of proof for an exception to the successive motions bar. Ramsey appealed.

ISSUE

Whether the circuit court erred by dismissing Ramsey’s PCR motion as successive.

HOLDING

Because Ramsey previously filed two PCR motions that both raised the issue of his alleged unlawful parole revocation, and because Ramsey failed to show any exception to the successive motions bar, the circuit court did not err by dismissing Ramsey's PCR motion as successive. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2022-CP-00103-COA (Aug. 15, 2023)

Opinion by Judge Emfinger

Hon. Randi P. Mueller (Harrison County Circuit Court, Second Judicial Dist.)

Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Sydney Bailey](#)

Edited by [Doug Reynolds](#) & [Ashley House](#)

[Click here to view the full opinion](#)

COURT OF APPEALS - CRIMINAL CASES

BOYINGTON V. STATE

CRIMINAL - FELONY

EVIDENCE - RELEVENCY - ADMISSION - Under *Hewlett*, the trial judge must exclude photos that have no evidentiary purpose and only arouse the emotions of the jury

CRIMINAL PROCEDURE - REVERSAL - HARMLESS ERROR - Under *Croft*, a harmless-error prevents setting aside convictions for small errors that have little likelihood of changing the result of the trial

CRIMINAL LAW - PARTICULAR OFFENSES - FELONY FLEEING - When a driver of a motor vehicle is given a signal by a law enforcement officer to stop in lawful performance of the officer's duty who has a reasonable suspicion to believe the driver in question committed a crime, any driver who willfully fails to obey such a direction and operates a motor vehicle with extreme indifference to the value of human life or with reckless or willful disregard for the safety of persons or property shall be guilty of a felony

CRIMINAL LAW - WEAPONS - FELON IN POSSESSION OF FIREARM - The State must prove (1) the defendant possessed a firearm; and (2) the defendant has been previously convicted of a felony crime

FACTS

In September 2019, Forrest County Deputy Sheriff Scott Smith attempted to stop a motorcyclist, whose motorcycle had no visible license plate. As Smith approached, the motorcyclist sped off and Smith followed in a high-speed chase for a mile and a half. The motorcyclist went off the road, and the driver escaped. Smith was unable to follow, but during the chase identified the driver's height, sex, build, hair style, hair color, and the presence of tattoos on the driver's back. At the crash site, Smith found a backpack beside the motorcycle which contained an operable firearm, one corresponding bullet, and an ID issued to Marjorie Hedden Shows. Several days later, Shows was asked about the backpack, and she admitted the motorcycle was driven by Richard Boyington, and at trial admitted the backpack was with Boyington on the motorcycle. Boyington told Shows to go to Steve Brewer's home, and that Boyington was on the run from the police. Shows admitted that Boyington arrived at Brewer's home with a swollen knee. Forrest County Sheriff's Investigator Rafael Bailey went to Brewer's home. An individual who identified himself as Tommy Morrison answered the door, and denied having knowledge of Boyington's whereabouts. Bailey later discovered that Morrison was Boyington, who lied about his identity. In October 2020, Boyington was arrested and law enforcement officers found tattoos in the exact location as the tattoos Smith identified on the motorcycle driver. Boyington also possessed the same identifiable characteristics as the motorcycle driver according to Smith, and the tattoos on Boyington's back consisted of the face of a Viking, a figure holding a globe, and a horseman. In March, 2020, Boyington was indicted on the charges of felony fleeing or eluding law enforcement pursuant to Miss. Code Ann. § 97-9-72(2) and possession of a

weapon by a felon in violation of Miss. Code Ann. § 97-37-5, as Boyington had previously been convicted of capital murder in 1987. During trial, Boyington wanted to introduce photos of himself to show that he had no injuries. This admission was not contested, but the State additionally requested to introduce photos that had been taken of Boyington when he was arrested. The State's photos showed more of Boyington's tattoos, including of a swastika. Boyington objected in general to any photograph that is more prejudicial than probative, but no objection was made to the swastika tattoo photo in particular. The circuit court found the probative value of the State's photos was not outweighed by the danger of prejudice to Boyington, and the photos were admitted into evidence. At trial the swastika tattoo photo was discussed and shown. Boyington was convicted of felony fleeing or eluding law enforcement and possession of a weapon by a felon. Boyington appealed.

ISSUE

Whether the circuit court erred in admitting the photograph of Boyington's swastika tattoo.

HOLDING

Because Smith was able to identify Boyington from his build, hair color, and a photograph of the tattoos on Boyington's back that did not contain any swastikas, because the State's additional photos did not show bruising on Boyington to contradict the photos introduced by Boyington, because the circuit court failed to articulate how the swastika photo was probative to the charges, and because other evidence, which included the photos of the tattoos on Boyington's back, Boyington's fake identity to the officers, and the presence of the firearm in the backpack near the motorcycle he fled with, presented to the jury was sufficient to support the jury's guilty verdict that satisfied the elements of felony fleeing of law enforcement and a felon in possession of a firearm, the swastika photo was irrelevant and not admissible under the Miss. R. Evid. 401(a), but the error in the admission of the swastika tattoo photo was harmless. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit.

Affirmed - 2022-KA-00601-COA (Aug. 15, 2023)

Opinion by Judge McDonald

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Youssef Kishk](#)

Edited by [Nivory Gordon](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

CHATMAN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - EVIDENCE - SUFFICIENCY - To sustain a conviction, the evidence must show beyond a reasonable doubt that the accused committed the act charged under circumstances where every element of the offense existed

CRIMINAL PROCEDURE - SUFFICIENCY - CHALLENGES - Challenges to the sufficiency of the evidence require a consideration of all credible evidence as true; the State can also draw all reasonable inferences from that evidence

CRIMINAL PROCEDURE - BURDEN OF PROOF - SEXUAL BATTERY OF A CHILD - In sexual battery of a child cases, the State does not have to show proof of penetration if the evidence, which can include either medical evidence or testimony from the victim, establishes that a child younger than sixteen has suffered lacerations or tears to his or her private areas; however, without such evidence, the State must provide proof of penetration; medical evidence is not required, and circumstantial evidence can suffice as long as the State establishes the actions beyond a reasonable doubt

FACTS

Thomas Chatman was found guilty of committing two counts of sexual battery against Kevin, a ten-year-old. Prior to his conviction, Chatman was a friend of Kevin's father and tasked with caring for Kevin's father when Kevin's grandmother could no longer handle these duties. Chatman lived on the property in a shed in the backyard with access to the house for the sole purposes of using the bathroom, cooking, and showering. Later, Kevin's grandmother discovered Chatman was using balloons to teach Kevin how to commit sexual acts. In response, Kevin's grandmother kicked Chatman off the property. Chatman later returned to the home at the request of the grandmother because Kevin's father's health had further declined. Subsequently, Kevin's sister referenced an incident of sexual abuse perpetrated by Chatman upon Kevin during an argument with Kevin in front of the grandmother. Kevin's grandmother then reported the incident to the police. Chatman was arrested and indicted on two counts of sexual battery. At trial, Kevin's grandmother testified that Kevin claimed he did not tell anyone about the incident because Chatman told Kevin that Chatman would kill Kevin's father if Kevin told anyone. Kevin also testified at trial regarding the incident, describing Chatman's actions in detail and further testifying that Chatman's actions hurt him. Kevin continued to testify that some bleeding in the anal area occurred after the incident. Chatman stated that he never inappropriately touched Kevin in any way. The jury convicted Chatman on both counts of sexual battery. Chatman appealed.

ISSUES

Whether the evidence was sufficient to support the convictions of sexual battery.

HOLDING

Because Kevin answered in the affirmative when asked whether Chatman had penetrated him and because Kevin testified to the jury he was hurt by the penetration and subsequently bled from his rear end, the evidence was sufficient to support the convictions of sexual battery. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2022-KA-00386-COA (Aug. 15, 2023)

Opinion by Judge McCarty

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

Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Matt Hennington](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

MISSISSIPPI CASES EDITORS
ASHLEY HOUSE & MASON SCIONEAX

ASSOCIATE CASES EDITORS
EMILEE “EMME” CROCKER

KARA EDWARDS
KENNEDY GERARD
DOUG REYNOLDS
THOMAS SIMPSON
KAYLA TRAN

Thank you for supporting the Mississippi Law Journal.

Questions or comments: Ashley House & Mason Scioneaux, newsletter@mississippilawjournal.org

All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007.

Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Ashley House or Mason Scioneaux, newsletter@mississippilawjournal.org. If you have questions about accessing or using the BriefServ website, please contact us at support@mississippilawjournal.org