

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 11, 2024***SUPREME COURT - CIVIL CASES*****LOGAN V. REDMED, LLC****CIVIL - CONTRACT**

CONTRACT LAW - CONTRACT ELEMENTS - VALID CONTRACTS - A valid contract must have (1) two or more contracting parties, (2) consideration, (3) an agreement that is sufficiently definite, (4) parties with legal capacity to make a contract, (5) mutual assent, and (6) no legal prohibition precluding contract formation

CONTRACT LAW - CONTRACT ELEMENTS - CONTRACT ENFORCEABILITY - An agreement must be definite and certain in order to be enforceable

CONTRACT LAW - ESSENTIAL TERMS - PRICE - Price is an essential term, the lack of which precludes contract formation

CONTRACT LAW - ESSENTIAL TERMS - MUTUAL ASSENT - The assent of the parties in the formation of a contract must necessarily be gathered from their words, acts, and outward expressions

FACTS

John Logan managed medical clinics for RedMed, LLC (“RedMed”) while also a shareholder for RedMed’s parent company, Covenant Investing Series, II, Inc. (“Covenant”). In 2015, Logan opened a competing clinic, MedPlus Urgent Care, LLC (“MedPlus Urgent Care”), under his wife’s name. The other Covenant shareholders sued Logan. After executing a settlement in 2017, Logan separated from RedMed and Covenant in exchange for a cash buyout. The settlement also contained a non-compete clause that prevented Logan from opening a new clinic within five miles of the RedMed clinic in Oxford for five years. In 2019, Logan found and leased a property in Oxford to open a new clinic. Because the location was less than a mile from RedMed’s Oxford clinic and because only two years had elapsed since the settlement, RedMed’s president called and informed Logan that he breached the non-compete agreement. After this call, Logan formed MedPlus Oxford, LLC (“MedPlus Oxford”), with Ronnie Leggitt as the listed owner. Leggitt was the primary investor, and Logan’s other investors were M&K Equipment Rentals, LLC (“M&K”), Michael Turner, Karol Turner, Digby Family Holdings, LLC (“Digby Family Holdings”), and Jason Digby. No investors knew of Logan’s non-compete agreement until after the lease was signed in Oxford. Various lawsuits ensued. In November 2019, Logan sued in Lee County Chancery Court, seeking a declaratory judgment that he was not in breach of the non-compete agreement. In December 2019, RedMed sued Logan, MedPlus Urgent Clinic, LLC (“MedPlus Urgent Clinic”), M2 Billing, MedPlus Oxford, and Leggitt in Lafayette County Circuit Court. Leggitt was later dismissed. In November 2020, M&K and its owners, the Turners, sued Logan in Lee County Chancery Court. In December 2020, RedMed amended its complaint to add M&K, the Turners, Digby Family Holdings, and Jason Digby as defendants. In January 2021, the Turners and MedPlus Oxford filed cross-claims against Logan. In March 2021, Digby Family Holdings and Jason Digby also filed cross-claims against Logan. That same month, Oxford Leasing, LLC (“Oxford Leasing”), and MedPlus Fulton, LLC (“MedPlus Fulton”), sued Logan for breach of fiduciary duties. Oxford Leasing was the majority owner of MedPlus Fulton and was owned by Leggitt, the Turners, and Digby. Then, the Lee County Chancery Court transferred Logan’s initial suit to the Lafayette County Circuit Court. In May 2021, RedMed dismissed its claims against MedPlus Oxford, M&K, the Turners, Digby Family Holdings, and Digby. On July 8, 2021, all remaining parties and their attorneys met at the Lafayette County Courthouse for a nine-hour mediation. Logan left after only seven hours due to a heated dispute, and his attorneys continued to negotiate. Some terms were negotiated as part of a settlement agreement (“July 8 Agreement”), including payment by Logan to the Turners via cash and via promissory note and to Digby via cash. The agreed terms also pledged Logan’s interest in MedPlus Urgent Clinic to back up an existing promissory note to Leggitt.

Finally, the agreement required Logan to transfer his interest in MedPlus Fulton, cease management and billing with MedPlus Fulton, and agree to a five-year, five mile non-compete with MedPlus Fulton. In return, Logan would receive fifty percent of the accounts receivable at MedPlus Fulton billed through July 31, or such date that Logan exited MedPlus Fulton, and all ongoing litigation would be dismissed. The proposed agreement left unresolved (1) the interest rate and length of time on the promissory note to the Turners, (2) whether the settlement would be confidential, (3) details about Logan's departure from MedPlus Fulton, and (4) the form and substance of the pledge obligation to secure the preexisting note to Leggitt. The mediator documented the agreed terms, and the attorneys for all parties agreed that outstanding issues would be resolved by July 31, 2021. The Lafayette County Circuit Court stayed all proceedings upon collective request by all parties pending the unresolved issues. On July 29, Logan refused to agree with a revised version of the Settlement Agreement and Release. RedMed and the other plaintiffs filed a Motion to Enforce Settlement. The circuit court granted the motion and found that a meeting of the minds between parties had taken place with intent to contract. The circuit court further found that all material terms were present to enforce a contract. In part, the circuit court resolved the issue of the interest rate on the note to the Turners and held that it would be paid under a five-year term with a 4.25 percent interest rate. While the circuit court did not stay execution of the judgment, it did order a Stay Pending Interlocutory Appeal. After a hearing in January 2022, Logan failed to post the supersedeas bond, and the circuit court granted the RedMed's and the other plaintiffs's motions to lift the stay and enforce the settlement agreement. In January 2022, Logan then transferred control of MedPlus Fulton and paid the Turners and Digby the agreed cash amounts. Between July 31, 2021, and the handover in January 2022, Logan made payments to himself from the MedPlus Fulton's accounts receivable based on that agreed term. In May 2022, the circuit court again heard various motions, including a motion to compel payment on the promissory note to the Turners, which Logan had failed to begin paying. The circuit court granted the motion to compel payment of the promissory note and further confirmed the amount owed to Logan from MedPlus Fulton's accounts receivable. Logan appealed.

ISSUES

Whether (1) the July 8 agreement was sufficiently definite to satisfy that element of contract formation and (2) there was mutual assent between the parties to constitute an enforceable agreement.

HOLDING

(1) Because the proposed settlement agreement did not establish the price of the loan due to the undetermined interest rate and term of the promissory note, and because price was an essential term in forming a contract, the July 8 agreement was not sufficiently definite to provide the basis of a binding settlement agreement. (2) Because negotiations broke down before the parties could agree to be bound by the whole agreement and before the parties could agree to material terms related to the earlier-agreed-upon facets of the settlement, no meeting of the minds occurred sufficient to constitute a binding contract. Therefore, the Supreme Court reversed and remanded the judgment of the Lafayette County Circuit Court.

DISSENT

Justice Chamberlin argued that the interest rate on the promissory note to the Turners was not a material term. Instead, he argued that the amount of the balance payment, agreed to by the parties in the mediation, was the material term in this case. Furthermore, he believed that a meeting of the minds occurred, as evidenced by the documented agreement and Logan's subsequent partial performance of the agreed terms.

Reversed & Remanded - 2022-CA-00669-SCT (Jan. 11, 2024)

En Banc Opinion by Justice Coleman - Dissent by Justice Chamberlin

Hon. Grady Franklin Tollison III (Lafayette County Circuit Court)

Gregory M. Hunsucker & Charles L. Balch III for Appellants - Hugh Ruston Comley, T. Swayze Alford, Jessie Wayne Doss Jr., Briana Antoinette O'Neil, & Kayla Fowler Ware for Appellees

Briefed by [William Davis](#)

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

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MELTON V. UNION HILL MISSIONARY BAPTIST CHURCH

CIVIL - OTHER

CIVIL PROCEDURE - JURISDICTION - SUBJECT MATTER JURISDICTION - Subject matter jurisdiction is a threshold inquiry that must be determined before a court may proceed to the merits and is a question of law that is to be reviewed de novo

CIVIL PROCEDURE - SUBJECT MATTER JURISDICTION - ECCLESIASTICAL ABSTENTION DOCTRINE - Ecclesiastical questions may not be answered by any court because of the Constitution's Establishment Clause that has been held to command a separation of church and state

FACTS

Reverend Calvin Melton began as a pastor of Union Hill Missionary Baptist Church ("Union Hill") in March 2019. Melton was terminated by Union Hill in 2021 yet continued to appear and preach at their Sunday morning services. Union Hill's congregation voted unanimously to not retain Melton as their pastor; however, Melton continued to preach at the church despite the vote. Union Hill then filed a complaint in chancery court seeking injunctive relief to have Melton "preliminary and permanently enjoined from entering onto the church premises and acting like a pastor," attaching with their complaint a portion of their bylaws that dealt with pastor termination, averring that it had followed the procedure. Melton then filed a motion to dismiss, or a motion to appoint a moderator to allow the church to speak. The chancellor found that it was unclear whether the congregation had spoken clearly regarding the church's employment of Melton and ordered the congregation to conduct another vote. The result of the second vote was for Melton to remain as the church's pastor. Union Hill filed a motion for a new trial or, alternatively, to amend the court's order pursuant to Miss. R. Civ. P. 59. The chancellor granted the motion, finding that there was newly discovered evidence regarding Union Hill's bylaws. After another hearing, the chancellor entered a final judgment to the effect that Melton no longer was the pastor of Union Hill. Melton appealed.

ISSUE

Whether the chancery court erred in maintaining jurisdiction.

HOLDING

Because courts were not to treat ecclesiastical controversies as secular ones and chancellors had no authority to vacate a church's vote and order a new one, because the issue in this case of who was to serve as the church's pastor made this an ecclesiastical question that the chancery court was not permitted to answer, and because the Establishment Clause has been held to command a separation of church and state, the Ecclesiastical Abstention Doctrine applied, so the chancery court erred in maintaining jurisdiction. Therefore, the Supreme Court reversed and vacated the judgment of the Madison County Chancery Court.

Reversed & Vacated - 2022-CA-00737-SCT (Jan. 11, 2024)

Opinion by Presiding Justice Kitchens

Hon. James Christopher Walker (Madison County Chancery Court)

Kenya Reese Martin for Appellant - Matthew Allen Baldrige for Appellee

Briefed by [Margaret Gardner](#)

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

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SUPREME COURT - POST-CONVICTION RELIEF

RONK V. STATE

CIVIL - DEATH PENALTY - POST-CONVICTION

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - The denial of a post-conviction relief motion is a final judgment and bars subsequent requests for post-conviction relief unless (1) there are issues with the defendant's supervening insanity prior to the execution of a death sentence; (2) there has been an intervening decision of the United States Supreme Court or of the Mississippi Supreme Court, which would require a different outcome or sentence; (3) there is newly discovered evidence, which was not previously discoverable, that would have been practically conclusive if it were available at trial; or (4) the defendant claims that his sentence has expired, or his probation, parole, or conditional release has been unlawfully revoked

CRIMINAL LAW - POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - An ineffective assistance of counsel claim is procedurally barred when introduced on the first time on appeal

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - SUPPRESSION OF EVIDENCE - Under *Brady*, suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution

CRIMINAL PROCEDURE - SUPPRESSION OF EVIDENCE - BURDEN OF PROOF - A *Brady* violation requires proof (1) that the government possessed evidence favorable to the defendant (including impeachment evidence); (2) that the defendant does not possess the evidence nor could he obtain it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different

FACTS

Firefighters responding to a residential call found the remains of Michelle Lynn Craite after they extinguished the fire. Evidence showed that the fire was intentional. Craite's live-in boyfriend, Timothy Ronk, became the main suspect. After his arrest, Ronk told his online girlfriend that he stabbed Craite after Craite threatened to shoot Ronk. No weapons were found in Craite's home. On behalf of the State, forensic pathologist Dr. Paul McGarry testified about his findings of Craite's autopsy, specifically, the fact that Craite was alive when the Ronk set the fire, to prove that Ronk killed Craite while he was engaged in the commission of arson. Ronk did not present expert testimony to counter Dr. McGarry's findings. The jury convicted Ronk of armed robbery and capital murder with the underlying felony of arson. Ronk was sentenced to thirty years in prison and death, respectively. In sentencing Ronk to death, the jury found that the mitigating circumstances failed to outweigh aggravating circumstances. The Supreme Court affirmed the decision and later denied Ronk's petition for post-conviction relief. In 2019, Ronk petitioned the United States District Court for the Southern District of Mississippi for a writ of habeas corpus. In February 2021, the district court stayed the proceedings to allow Ronk to return to the Supreme Court and exhaust certain claims. Ronk filed a successive motion for post-conviction relief.

ISSUES

Whether the circuit court erred in (1) ruling that Ronk's ineffective-assistance-of-post-conviction-counsel claim for failing to seek funds to hire an independent forensic pathologist to review Dr. McGarry's autopsy report and to challenge his trial testimony was neither sufficient to surmount the bars of the Uniform Post-Conviction Collateral Relief Act ("UPCCRA") nor satisfied the newly-discovered-evidence exception; (2) barring Ronk's prosecutorial-misconduct claim and ruling that the related ineffective-assistance-of-post-conviction counsel claim was neither sufficient to surmount the bars nor satisfied the newly-discovered-evidence exception; (3) ruling that Ronk's claim that counsel were ineffective for failing to impeach Dr. McGarry's testimony about the carbon-monoxide level in Craite's blood and her being burned alive was neither sufficient to surmount the bars nor satisfied the newly-discovered-evidence exception; (4) barring

Ronk's claim that the State suppressed material information about Dr. McGarry's past and ruling that the related ineffective-assistance-of-post-conviction counsel claim was neither sufficient to surmount the bars nor satisfied the newly-discovered-evidence exception; (5) ruling that Ronk's ineffective assistance claim for failing to investigate Dr. McGarry's past and to impeach his testimony was neither sufficient to surmount the bars nor satisfied the newly-discovered evidence exception; (6) ruling that Ronk's ineffective assistance claim for failing to further investigate the details of Craite's prior assault-and-battery conviction and to present evidence of her criminal history as support for their defense theory was neither sufficient to surmount the bars nor satisfied the newly-discovered evidence exception; (7) ruling that Ronk's ineffective assistance claim for failing to seek funds to hire a neuropsychologist to present mitigating evidence of his history of neurological dysfunction, bipolar disorder, and attention deficit with hyperactivity disorder ("ADHD") was neither sufficient to surmount the bars nor satisfied the newly-discovered-evidence exception; and (8) ruling that cumulative error did not merit relief.

HOLDING

(1) Because Ronk could not show that the lack of a counter-expert witness prejudiced him, and because the exact timing of Craite's death was irrelevant since the murder and arson were part of one continuous transaction, Ronk's ineffective-assistance-of-post-conviction-counsel claim lacked an arguable basis, was insufficient to surmount the bars of the UPCCRA, and did not meet the newly-discovered-evidence exception. (2) Because Ronk failed to show that Dr. McGarry's expert testimony was false, because Ronk failed to show that the State knew the expert testimony to be false, and because Ronk failed to show that a disproving testimony was material to his conviction, Ronk's prosecutorial-misconduct claim was procedurally barred. (3) Because Ronk's trial counsel's failure to use a lab report to impeach Dr. McGarry's testimony did not constitute actionable prejudice or deficiency, Ronk's ineffective-counsel claim lacked an arguable basis, was insufficient to surmount the bars, and did not meet the newly discovered evidence exception. (4) Because Ronk failed to show that the State possessed or controlled material impeachment evidence regarding Dr. McGarry's credibility and consequently no *Brady* violation was shown, Ronk's claim was barred and the ineffective-assistance-of-post-conviction-counsel claim lacked an arguable basis, was insufficient to surmount the bars, and the newly-discovered-evidence exception was unmet. (5) Because it was not reasonably probable that a jury would have reached a different result if Ronk's trial counsel had impeached Dr. McGarry since news articles were insufficient evidence to overturn Ronk's conviction, Ronk's ineffective assistance claim lacked an arguable basis, was insufficient to surmount the bars, and did not meet the newly-discovered evidence exception. (6) Because no weapons were found inside Craite's home and because Ronk stabbed her in the back multiple times, a jury would not have reasonably found that Ronk acted in self-defense, and Ronk's ineffective assistance claim lacked an arguable basis, was insufficient to surmount the bars, and did not meet the newly discovered evidence exception. (7) Because Ronk's trial counsel's hired experts did not suggest that a forensic pathological or neuropsychological evaluation was needed, Ronk's trial counsel was not ineffective for failing to find otherwise, and Ronk's ineffective assistance claim lacked an arguable basis, was insufficient to surmount the bars, and did not meet the newly discovered evidence exception. (8) Because the Supreme Court's denial of Ronk's motion for post-conviction relief and the claims raised therein did not merit relief, cumulative error did not merit relief. Therefore, the Supreme Court denied Ronk's petition for post-conviction relief.

DISSENT

Justice Kitchens argued the circuit court erred by ruling a claim of ineffective assistance of post-conviction counsel was procedurally barred, noting the Supreme Court has held such claims in death-penalty cases exempt from the procedural bars of the UPCCRA. Additionally, he argued that by barring such claims, the majority eliminated the lone remedy available to courts for violating petitioner's right to effective assistance of post-conviction counsel in death penalty cases.

Post-Conviction Relief Denied - 2021-DR-00269-SCT (Jan. 11, 2024)

En Banc Opinion by Justice Griffis - Dissent by Presiding Justice Kitchens

Hon. Lisa P. Dodson (Harrison County Circuit Court)

Graham Patrick Carner & Carol René Camp for Petitioner - Allison Kay Hartman, Ashley Lauren Sulser, & Brad Alan Smith (Att'y Gen. Office) for Respondent

Briefed by [Hunter Seidler](#) & [John Furla](#)

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

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SUPREME COURT - ORDERS

CAVITT V. STATE

EN BANC ORDER

ORDER

Derome M. Cavitt filed an Application for Leave to Proceed in the Trial Court, his third petition for post-conviction relief after his conviction was affirmed on direct appeal in 2015. Cavitt contended to be entitled to post-conviction collateral relief based upon the alleged denial of his right to due process at sentencing, which resulted in an illegal sentence. The Supreme Court found that Cavitt's application was untimely, successive, waived, and failed to satisfy any of the statutory exceptions. Furthermore, the Court found that the application was frivolous and warned Cavitt that any future filings deemed frivolous may result in monetary sanctions and restrictions on filing applications for post-conviction collateral relief. Therefore, the Supreme Court denied the Application for Leave to Proceed in the Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Cavitt's application for post-conviction relief should be dismissed. However, he disagreed with the finding that the application was frivolous and with the warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief. He argued that Cavitt made reasonable arguments in his application for post-conviction relief, and, therefore, Cavitt's application was not frivolous. Further, he argued that monetary sanctions and restrictions on filing subsequent applications for post-conviction relief are a violation of a defendant's constitutional right to access to courts, and, therefore, the Supreme Court should not have warned Cavitt of future sanctions and restrictions.

Denied with Sanctions Warning - 2018-M-00197 (Jan. 8, 2024)

En Banc Order by Justice Coleman - Objection in Part by Presiding Justice King

Briefed by [Emily Phillips](#)

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

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CHRISTIAN V. STATE

EN BANC ORDER

ORDER

Travis Richard Christian filed a Motion for Post-Conviction Relief to Reduce or Modify Sentence. Christian was convicted on two counts of capital murder (underlying felony of robbery), one count of house burglary, conspiracy to commit house burglary, felonious child neglect, and felon in possession of a firearm. In 2017, Christian's sentences were affirmed on direct appeal. Finding Christian's motion time-barred, successive, without exception under Miss. Code Ann. §§ 99-39-5(2), -27(9), without merit, and frivolous, the Supreme Court denied the motion and warned that future filings deemed frivolous may result in monetary convictions and restrictions on filing applications for post-conviction collateral relief. Therefore, the Supreme Court denied Christian's Motion for Post-Conviction Relief to Reduce or Modify Sentence.

OBJECTION IN PART

Presiding Justice King agreed that Hawkins’s application for post-conviction relief should have been dismissed. However, he disagreed with the finding that the application was frivolous and with its warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief *in forma pauperis*. Because Christian made reasonable arguments in his application for post-conviction relief, he argued that Christian should not have been subject to warnings of future sanctions and restrictions, and that imposing such monetary sanctions on a criminal defendant proceeding *in forma pauperis* was unconstitutional and only served to preclude that defendant from his lawful right to appeal.

Denied with Sanctions Warning - 2021-M-00807 (Jan. 8, 2024)

En Banc Order by Justice Chamberlin - Objection in Part by Presiding Justice King

Briefed by [Madeline Crane](#)

Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

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FLYNT V. STATE

EN BANC ORDER

ORDER

Thomas Glynn Flynt was convicted of and sentenced for manslaughter, and both his conviction and his sentence were affirmed on direct appeal in 2016. Flynt subsequently filed two motions for post-conviction relief pro se, and this was his third Motion for Post-Conviction Relief. The Court found the motion time-barred, successive, and without statutory exception under Miss. Code Ann. §§ 99-39-5(2), -27(9). The motion was also without merit and frivolous. Therefore, the Court denied Flynt’s motion and warned him against filing any more frivolous claims, which could result in monetary sanctions and in restrictions on filing applications for post-conviction collateral relief *in forma pauperis*.

OBJECTION IN PART

Presiding Justice King agreed with the Court that Flynt’s application for post-conviction relief should be denied. He disagreed, however, with the Court’s finding that the application is frivolous and with its warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief *in forma pauperis*. Presiding Justice King also argued that the Court would be violating that individual’s constitutional right to have access to the courts if it were to restrict an individual’s right to proceed *in forma pauperis*. Because of this, the Court should not discourage convicted defendants from exercising their right to appeal.

Denied with Sanctions Warning - 2016-M-00862 (Jan. 8, 2024)

En Banc Order by Justice Coleman - Objection in Part by Presiding Justice King

Briefed by [Minnie Blackman](#)

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

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IN RE: THE RULES OF CIV. PROC. [MISS. R. CIV. P. 54]

EN BANC ORDER

ORDER

This en banc Order by the Supreme Court, on a motion by the Advisory Committee on Rules, amended Rule 54 of the Mississippi Rules of Civil Procedure. Rule 54 of the Mississippi Rules of Civil Procedure, which pertains to the requirements of judgments and cost directed to parties, was amended to allow the claimant to recover more than the

amount demanded in the pleadings upon showing proper proof at trial. The amendment to Rule 54 becomes effective January 18, 2024.

Exhibit A, referenced and attached to the Order, shows the amendments to Rule 54.

Ordered - 89-R-99001-SCT (Dec. 19, 2023)

En Banc Order by Justice Coleman

Briefed by [Jarius Colley](#)

Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

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MISS. BAR V. RUSSELL

EN BANC ORDER

ORDER

The Mississippi Bar petitioned the Court to transfer attorney Rhett R. Russell's disability inactive status and be reimbursed for the costs of this proceeding. Russell was a licensed member of the Mississippi Bar. Russell had previously petitioned the Tennessee Board of Professional Responsibility to transfer his Tennessee law license to disability inactive status, which the Tennessee Supreme Court granted. Due to this, the Mississippi Bar initiated proceedings under Miss. R. Discipline 21(c). Because of Russell's disability inactive status in Tennessee and the medical documentation provided by Russell and the Mississippi Bar, the Supreme Court granted the Mississippi Bar's petition to render Russell disability inactive status. The Supreme Court ordered that Russell not practice law or render legal advice and notify his clients that he was rendered unable to practice law. The Supreme Court denied the Mississippi Bar's petition for reimbursement because Russell cooperated with the Mississippi Bar's petition, and the Mississippi Bar failed to file a separate motion requesting a definite reimbursement amount for costs and expenses.

Grant in Part & Deny in Part - 2023-BD-00843-SCT (Jan. 8, 2024)

Order by Justice Beam

Briefed by [Brandon D. Peterson](#)

Edited by [Nivory Gordon](#) & [Ashley House](#)

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TARVIN V. STATE

EN BANC ORDER

ORDER

Michael Tarvin was convicted of rape, burglary, and kidnapping. Tarvin submitted his seventh application for Leave to Proceed in the Trial Court. The Supreme Court found Tarvin's application time-barred under Miss. Code Ann. § 99-39-5(2) and barred as a successive writ under Miss. Code Ann. § 99-39-27(9). The Supreme Court also cited previous warnings about frivolous filings and concluded that Tarvin's application warranted sanctions. Therefore, the Supreme Court denied Tarvin's application, restricted him from filing future applications for post-conviction relief, and imposed monetary sanctions.

OBJECTION

Presiding Justice King objected to the order, arguing that Tarvin's petition for post-conviction relief should have been dismissed for lack of merit without sanctions. He argued that sanctions unconstitutionally restrict Tarvin's fundamental and constitutional rights to access the courts.

Denied with Sanctions - 2022-M-00260 (Jan. 8, 2024)

Order by Justice Chamberlin - Objection by Presiding Justice King

Briefed by [Katie Shaw](#)

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

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WILLIAMS V. STATE

EN BANC ORDER

ORDER

Willie E. Willims, Jr. filed an Application for Leave to Proceed in the Trial Court, his fourth motion for post-conviction relief. In 2004, Williams was convicted of possession of cocaine with intent to distribute and was sentenced to life as a habitual offender. The Court found that the application was not only time-barred, but also barred as a successive writ pursuant to Miss. Code Ann. §§ 99-39-5(2), 27(9). The Court further found the filing frivolous and warned Williams that future filings deemed frivolous may result in both monetary sanctions and restrictions on filing applications for post-conviction collateral relief *in forma pauperis*. Therefore, the court ordered that the Application for Leave to Proceed in the Trial Court be denied.

OBJECTION IN PART

Presiding Justice King argued that although the application should be denied, its filing was not frivolous because Williams made “reasonable arguments.” Justice King further disagreed with the Courts warning, arguing that the imposition of monetary sanctions on a criminal defendant proceeding *in forma pauperis* only serves to punish or preclude that defendant from his lawful right to appeal, and therefore his access to the courts, violating a defendant’s constitutional rights.

Denied with Sanctions Warning - 2016-M-01063 (Dec. 20, 2023)

En Banc Order by Justice Chamberlin - Objection in Part by Presiding Justice King

Briefed by [Dane D. Norvell II.](#)

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

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SUPREME COURT - CRIMINAL CASES

HAWKINS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - SEXUAL BATTERY - ELEMENTS - A person is guilty of sexual battery if they engage in sexual penetration of a minor child if the person is in a position of authority over the children, including but not limited to the child’s teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach

CRIMINAL LAW - SEXUAL BATTERY - AUTHORITY FIGURES - The statute includes a nonexhaustive list of the type of positions that would qualify a person to be in trust or authority over a child

CRIMINAL LAW- SEXUAL BATTERY - EVIDENCE - To determine if there is sufficient evidence a person was in a position of trust and authority over a minor, the court will look not only at the legal relationship but all the evidence and the totality of the circumstances

FACTS

George Hawkins and Tonya Ingram became a couple in 2014. Tonya and her children moved into Hawkins’s home a year later. As a couple, the two were in a common law marriage recognized by the State of Alabama. They had joint tax filings where Hawkins claimed Tonya’s children as dependents, and Hawkins wrote a letter showing his plan to make Tonya’s children heirs to his estate. Hawkins and Tonya contributed to the finances equally, and the children testified they saw Hawkins as a stepfather authority in the home. Hawkins sexually abused Tonya’s sixteen-year-old daughter Jane. Jane left a note for her brother explaining what happened and asked him to tell their mother. Later that day, Jane met with her boyfriend’s mother, whom took her to the hospital. DNA results from a rape kit confirmed Hawkins had sexually penetrated Jane. Hawkins was charged and ultimately convicted of sexual battery of a minor child under Miss. Code. Ann. § 97-3-95(2). Hawkins was sentenced to thirty years in prison. Hawkins appealed.

ISSUE

Whether the State failed to present sufficient evidence that Hawkins was in a position of trust or authority over Jane as required by Miss. Code. Ann. § 97-3-95(2).

HOLDING

(1) Because Hawkins and Tonya were in common law marriage recognized by the State of Alabama, because Hawkins claimed Tonya’s children as dependents, because Hawkins wrote that he saw Tonya’s kids as his own when he intended to leave them his estate, and because both Tonya and Jane testified they considered Hawkins a stepfather over the children, the totality of the circumstances was sufficient for a jury to find Hawkins had a position of trust and authority over Jane regardless of any legally defined relationship. Therefore, the Supreme Court affirmed the judgment of the Tishomingo County Circuit Court.

Affirmed - 2022-KA-01250-SCT (Jan. 11, 2024)

Opinion by Justice Coleman

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

George T. Holmes & Justin Taylor Cook (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Taylor Davis](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 9, 2024

COURT OF APPEALS - CIVIL CASES

BOLIVAR V. BOLIVAR

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - SUMMONS - ISSUANCE - In Miss. R. Civ. P. 81 matters, a summons must be issued; otherwise, service is defective

FAMILY LAW - SERVICE OF PROCESS - CONTEMPT PROCEEDINGS - Although contempt proceedings in divorce cases are often filed in the same cause number and proceed with the underlying divorce case, they are separate actions, requiring new and special summons

FAMILY LAW - SERVICE OF PROCESS - VOID JUDGMENTS - If a matter requires issuance of a summons pursuant to the rule governing a summons in a family court matter, and such a summons is not used, the resulting judgment is void because it is made without jurisdiction over the parties

FACTS

In April 2021, Carolyn Bolivar filed for divorce from her husband, Nathan Bolivar. Carolyn issued a Miss. R. Civ. P. 81 summons upon Nathan. After chancery court proceedings and three contempt motions, Carolyn filed a fourth contempt motion. Nathan objected, arguing that Carolyn failed to issue a new Miss. R. Civ. P. 81 summons to be served upon Nathan at least seven days prior to the hearing date. The chancery court overruled Nathan's motion and found him in contempt, entering a final judgment for Carolyn. Nathan appealed.

ISSUE

Whether Carolyn was required to issue and serve a new Miss. R. Civ. P. 81 summons upon Nathan as a prerequisite for a contempt hearing.

HOLDING

Because Miss. R. Civ. P. 81(d)(6) did not excuse the issuance of a new Miss. R. Civ. P. 81 summons for contempt matters, and because the contempt proceedings were separate actions from the divorce proceeding, Carolyn was required to issue and serve a new Miss. R. Civ. P. 81 summons upon Nathan for the contempt motion. Therefore, the Court of Appeals vacated the judgment of the Jones County Chancery Court.

Vacated - 2022-CA-00640-COA (Jan. 9, 2024)

Opinion by Chief Judge Barnes

Hon. Franklin C. McKenzie Jr. (Jones County Chancery Court, Second Judicial Dist.)

Risher Grantham Caves for Appellant - S. Christopher Farris for Appellee

Briefed by [Robert "Duncan" Jones](#)

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

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COLEMAN V. STAN KING CHEVROLET, INC.

CIVIL - CONTRACT

CIVIL PROCEDURE - JUDGEMENT - RELIEF FROM A JUDGMENT OR ORDER - Miss. R. Civ. P. 60(b)(6) provides that a court may relieve a party or his or her legal representation from a final judgment, order, or proceeding for any other reason justifying relief from the judgment

ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION - AFFIRMATIVE DEFENSE - Under the Federal Arbitration Act, an affirmative defense based on the statute of limitations should be addressed by an arbitrator, not the court

CIVIL PROCEDURE - TRIAL - STATUTE OF LIMITATIONS - Unless process is not timely served, the statute of limitations is tolled upon the filing of the complaint, and does not begin to run again until litigation has ended

FACTS

Kenneth Coleman owned a 2015 Chevrolet Silverado truck. In 2017, Coleman went to Stan King Chevrolet Inc., ("Stan King") to purchase a new truck. Stan King agreed to find a new truck for a trade-in value of \$32,000, although Coleman recalled that Stan King agreed to pay \$37,000 as the trade-in value. In August 2017, Coleman and Stan King entered into a retail installment contract for \$52,612.84 for the purchase of a new 2017 Silverado truck, but certain accessories were not provided to Coleman. In 2019, Coleman filed a complaint in the Lincoln County Circuit Court against Stan King alleging negligence, unlawful conversion, negligent misrepresentation, breach of express warranty, and breach of implied warranty. The contract had an arbitration provision on the back page, which Coleman contends he was unaware of when he signed the contract, despite the notice provision stating not to sign the contract before reading it. In 2019, the defendants filed an answer, affirmative defense, and moved to stay the proceedings until arbitration had been conducted, concluded, and confirmed in accordance with the terms of the agreement. The defendants filed an application to the circuit clerk for default judgment based on Coleman's failure to plead, answer, or otherwise defend the counterclaim and a motion to dismiss Coleman's complaint. Coleman's attorney countered by filing a motion to

strike the clerk's entry of default judgment. A motions hearing was held in 2021, but Coleman's attorney did not make an appearance. In December 2021, the circuit court dismissed Coleman's motion to strike and entered a default judgement against Coleman, finding the defendants were entitled to the relief sought in their counterclaim. In 2022, Coleman's attorney mailed a letter to the defendants' counsel, stating that Coleman wanted to proceed with arbitration and the statute of limitations was tolled from 2019 until 2021. The defendants disagreed that the statute of limitations was tolled and argued the court's last order terminated this matter. In June 2022, Coleman filed a motion pursuant to Miss. R. Civ. P. 60(b)(5)-(6), requesting the circuit court compel the defendants to arbitrate the claims, or alternatively, restore the case to the court's active docket. At the motions hearing, counsel for the defendant argued that the case was now barred by the statute of limitations. The circuit court dismissed Coleman's motion to compel, holding that the statute of limitation had run on the claims raised in the complaint. Coleman appealed.

ISSUE

Whether the circuit court erred by dismissing the motion to compel the defendants to arbitrate Coleman's claim or, alternatively, to restore the case to the circuit court's active docket.

HOLDING

Because the defendants' rejection of Coleman's attempt to proceed with arbitration provided justification for granting Coleman relief under Miss. R. Civ. P. 60(b)(6), because the subject agreement expressly provided the arbitrator should apply governing substantive law and the applicable statute of limitations and was governed by the Federal Arbitration Act, because the circuit court's ruling that the statute of limitations had run on the claims raised by Coleman was the sole basis for dismissing Coleman's Rule 60(b) motion, because the filing of a complaint tolled the statute of limitations until the circuit court entered its judgment, because the calculation or reasoning behind the court's ruling that Coleman's claims were statutorily time-barred was simply not supported by the record, and because the defendants offered no valid reason why they should not be required to comply with the court's prior judgment compelling arbitration, the case was ordered to return to the circuit court's active docket and the proceedings were stayed pending the conclusion of arbitration. Therefore, the Court of Appeals reversed and rendered the judgment of the Lincoln County Circuit Court.

DISSENT

Judge Greenlee argued that he would affirm the circuit court's decision because the Rule 60(b) motion was not timely. He continued that the motion did not assert a compelling argument that the court's judgment had been satisfied, released, or discharged, or that a prior judgment upon which the judgment was based had been reversed or otherwise vacated, or that it was no longer equitable that the judgement should have prospective application.

Reversed & Rendered - 2022-CA-00943-COA (Jan. 9, 2024)

En Banc opinion by Chief Judge Barnes - Dissent by Judge Greenlee
Hon. David H. Strong Jr. (Lincoln County Circuit Court)
Carroll Rhodes for Appellant - Brad Russell Boerner for Appellees
Briefed by [Hayward Gordon](#)
Edited by [Nivory Gordon](#) & [Mason Scioneaux](#)

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HEGMAN V. ADCOCK

CIVIL - PROPERTY DAMAGE

TORTS - TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS - ELEMENTS - In a tortious interference with business relations case, the plaintiff must prove by a preponderance of the evidence: 1) the acts of the defendant were intentional and willful; 2) the acts were calculated to cause damage to the plaintiffs in their lawful business; 3) the acts were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant; and (4) actual damage and loss resulted

TORTS - TORTIOUS INTERFERENCE WITH CONTRACT - ELEMENTS - The same four elements necessary to prove a claim for tortious interference with business relations apply to the separate tort of interference with contract

CIVIL PROCEDURE - VERDICTS - REQUEST FOR JUDGMENT CONTRARY TO VERDICT - Once a verdict has been returned in a civil case, the appellate court is not at liberty to direct that a judgment be entered contrary to that verdict short of a conclusion that, given the evidence as a whole, taken in the light most favorable to the verdict, no reasonable, hypothetical finder of fact could have made the same finding

CIVIL PROCEDURE - MOTION PRACTICE - ADDITIONAL FINDINGS - Under Miss. R. Civ. P. 52(b), a request for a trial court to amend its findings or make additional findings is discretionary

PROPERTY - RIPARIAN RIGHTS - JUDICIAL RELIEF - If a lower riparian landowner obstructs the flow of a stream or water course, thereby causing his upper riparian neighbor's lands to flood, the latter may secure judicial relief

PROPERTY - RIPARIAN RIGHTS - BURDEN OF PROOF - In a case involving the obstruction of a stream or water course that floods a upper riparian landowner's land, the burden is upon the plaintiff to show that the acts of the lower riparian landowner were a substantial contributing cause of the damages he suffered

FACTS

Frank Hegman, Hegman Farms Inc., Alfred F. Eaton, and Ann Ballard owned three separate but adjoining tracts of real property in Yazoo County, Mississippi. Eaton and Ballard's property (the "Eaton-Ballard Tract") was located in the middle of the properties owned by Hegman (the "Hegman Tract") and Hegman Farms (the "Hegman Farms Tract"), with the Hegman Farms Tract located to the west of the Eaton-Ballard Tract and the Hegman Tract located to the east. Hegman and Hegman Farms utilized both the Hegman Tract and the Hegman Farms Tract for farming, while Clay Adcock leased the Eaton-Ballard Tract for his farming operations as well. The slope of the properties caused rainwater and surface water to flow from the Hegman Tract, over the Eaton-Ballard Tract, then onto the Hegman Farms Tract, and into specifically constructed drainage pipes and ditches that allowed the water to reach a drainage ditch west of the Hegman Farms Tract. In 2015, Adcock hired contractor Will Phillips to perform land-forming work on the Eaton-Ballard Tract. The work included building up the ground elevation on the east side of the Eaton-Ballard Tract along the common boundary line with the Hegman Tract. In February 2016, Hegman filed a complaint against Eaton, Ballard, Adcock, and Phillips (the "Appellees"), alleging that the land-forming work substantially increased the elevation of the Eaton-Ballard Tract, which prevented surface water from flowing off the Hegman Tract. This also prevented Hegman from planting and harvesting the annual crops on the affected land. Adcock filed a counterclaim against Hegman for tortious interference with business relations. Adcock alleged that before filing the lawsuit, Hegman reviewed and discussed with Phillips the plan specifications for the land-forming work and ultimately approved the work. Adcock asserted that he intended to grow crops on the Eaton-Ballard Tract and sell the products following harvest; however, he alleged that Hegman's lawsuit prevented him from performing this work. In December 2016, the county court entered an order denying Hegman's motion for a temporary restraining order and permanent injunction with prejudice after finding that Hegman failed to prove that any negligent or intentional acts or omissions by the Appellees proximately caused Hegman to suffer damages. Furthermore, the county court directed Adcock and Phillips to finish the land-forming work, after which time the court would determine what damages, if any, were caused by the land-forming work, as well as any damages Adcock may be entitled based on his counterclaim. In April and May 2017, Adcock filed motions for injunctive relief and for contempt against Hegman, alleging that Hegman intentionally interfered with Adcock's land-forming work. The county court determined that Adcock's expert's testimony as to whether the land-forming work affected the surface water drainage from the Hegman Tract was more reliable. In September 2019, the county court entered an order stating that Adcock met his burden of proving by a preponderance of the evidence all the elements of his claim for tortious interference and awarded Adcock both compensatory and punitive damages. The county court also found Hegman in contempt of court and issued him a fine. Hegman filed a timely motion for reconsideration, relief from judgment, a new trial, and for specific findings of facts and conclusions of law pursuant to Miss. R. Civ. P. 52, 59, and 60. Hegman also filed a supplemental motion for relief from the judgment, alleging that Adcock's expert's billing entries show he manipulated and altered his maps and findings based on the advice from Adcock's counsel to remove verbiage on the maps referencing "adversely affected areas." Adcock responded and explained that his counsel advised his expert to change the wording due to concern that Hegman would attempt to portray such verbiage as an admission of fault by Adcock and Phillips. In August 2020, the county court entered a final judgment denying Hegman's motions and adopting the finding and rulings from the September 2019

final order. Hegman appealed to the Yazoo County Circuit Court, and the circuit court entered an order affirming the county court's rulings in part and reversing in part. The circuit court found insufficient evidence to support the findings of contempt; therefore, the circuit court reversed and rendered the county court's findings of contempt against Hegman. Hegman appealed.

ISSUES

Whether the county court erred by (1) applying an erroneous legal standard; (2) finding Hegman liable to Adcock for tortious interference with business relations; (3) denying Hegman's claim for damages and injunctive relief; (4) failing to make specific findings of facts and conclusions of law; and (5) refusing to make an in-person, on-site inspection of the lands involved in the action.

HOLDING

(1) Because the same four elements for interference with business relations applied to the tort of interference with contract, the county court applied the correct legal standard. (2) Because Hegman provided sufficient evidence showing that he had a justifiable right to file his lawsuit and that his filing of the lawsuit was not malicious or frivolous, it was not proven by a preponderance of the evidence that Hegman's acts were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of Hegman. (3) Because Hegman failed to prove that any negligence or intentional acts or omissions by the Appellees proximately caused Hegman to suffer damages that would entitle him to injunctive relief or damages, the verdict was not against the overwhelming weight of the evidence. (4) Because a request for a trial court to amend its findings or make additional findings was discretionary and because the September 2019 judgment contained substantial findings of fact and conclusions of law and clearly set forth the county court's explanations for its rulings on Hegman's claims and Adcock's counterclaim, the county court did not abuse its discretion in denying Hegman's request to make additional findings. (5) Because Hegman failed to cite any legal authority in support of his assertion, the consideration of the issue regarding the county court's refusal to make an in-person, on-site inspection of the lands was precluded on appeal. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Yazoo County Court.

Affirmed in Part; Reversed & Rendered in Part - 2022-CA-00501-COA (Jan. 9, 2024)

Opinion by Presiding Judge Carlton

Hon. Jannie M. Lewis-Blackmon (Yazoo County Circuit Court)

George Philip Schrader IV for Appellants - Wiley Johnson Barbour Jr. for Appellees

Briefed by [Ramsey Thrasher](#)

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

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MISS. DEPT. OF REHAB. SERVS. V. BUTLER

CIVIL - PERSONAL INJURY

EVIDENCE - EXPERT TESTIMONY - MISS. R. EVID. 702 - To be admissible, expert testimony must be both relevant and reliable; 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 (1) the testimony is based on sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the expert has reliably applied the principles and methods to the facts of the case

EVIDENCE - EXPERT TESTIMONY - RELIABILITY - Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are traditional and appropriate means of attacking shaky but admissible evidence

CIVIL PROCEDURE - REMITTITUR - AWARDED REMITTITUR - A remittitur is appropriate when either the trier of fact was influenced by bias, prejudice, or passion, or the damages were contrary to the overwhelming weight of the evidence

CIVIL PROCEDURE - ADDITUR - AWARDING ADDITUR - The party seeking the additur has the burden of proving his injuries, damages, and loss of income

TORTS - LOSS OF CONSORTIUM - ELEMENTS - The loss of consortium is the loss of any or all of the following rights which a spouse is entitled to in his or her marital relationship: society, companionship, love, affection, aid, services, support, sexual relations, the comfort of her husband or his wife as special rights and duties growing out of the marriage covenant, the right to live together in the same house, to eat at the same table, and to participate together in the activities, duties, and responsibilities necessary to make a home

FACTS

Carla and Steven Butler, individually and on behalf of their minor son, brought suit in the Rankin County Circuit Court against the Mississippi Department of Rehabilitation Services (“MDRS”). As well as MDRS employee Robin Stricklin for injuries Carla sustained when Stricklin’s car collided with the rear of the Butlers’s truck as Carla drove through a traffic circle while pregnant with their then-unborn son. At a bench trial, the Butlers’s expert testified that, based on his calculations, which were the accepted methodology in the field of accident reconstruction and yielded results that were within a reasonable degree of scientific certainty, Carla could not have been driving faster than twenty-five miles per hour through the traffic circle when the collision occurred and that there was no evidence to suggest that Carla’s speed contributed to the collision. MDRS and Stricklin did not voir dire or cross examine the Butlers’s expert on the reliability of his opinions and methods, nor did they present evidence to contradict the Butlers’s expert’s findings. The Butlers presented undisputed evidence about Carla’s injuries, pain and suffering, ongoing physical impairments, and inability to perform routine tasks that were possible prior to the collision. The Butlers also presented evidence that, and the circuit court found that, Carla’s inability to render care for her family and newborn son had greatly increased Steven’s obligations to care for their family and newborn son. MDRS and Stricklin did not object at trial to the admission and consideration of evidence regarding damage to Carla’s cell phone and wedding band. At trial, the circuit court denied MDRS and Stricklin’s motion for an involuntary dismissal. Stricklin then testified on behalf of herself and MDRS following the denial of the motion; both parties renewed their motion at the close of evidence. Following the trial, the circuit court found Stricklin, acting within the course and scope of her employment for MDRS, negligently caused the collision. The circuit court awarded the Butlers \$33,084.00 jointly for the loss of their vehicle and Carla \$75,000.00 individually for medical expenses and non-economic damages. The circuit court denied the Butlers’s motion to alter or amend the judgment to award Carla monetary damages for the replacement of Carla’s cell phone and the repair of her wedding band after finding that the Butlers jointly incurred these damages as a result of the collision and their motion for an additur for Steven’s loss-of-consortium claim. MDRS and Stricklin appealed. The Butlers cross appealed.

ISSUES

Whether the circuit court erred in (1) denying MDRS and Stricklin’s motion for an involuntary dismissal; (2) finding the Butlers’s expert testimony reliable; (3) admitting evidence of the Butlers’s claims for damage to Carla’s cell phone and wedding band; (4) denying the Butlers’s motion to alter or amend the judgment to award Carla monetary damages for the replacement of Carla’s cell phone and the repair of her wedding band; (5) awarding almost \$53,000.00 in non-economic damages to Carla and denying MDRS and Stricklin’s post-trial motion for a remittitur; and (6) denying the Butlers’s motion for an additur for Steven’s loss-of-consortium claim.

HOLDING

(1) Because Stricklin testified on behalf of herself and MDRS following the circuit court’s denial of their motion for an involuntary dismissal, MDRS and Stricklin waived their right to challenge the circuit court’s denial of their motion for an involuntary dismissal. (2) Because MDRS and Stricklin had ample opportunity to cross-examine the Butlers’s expert witness as to the reliability of his opinions and methods and to present evidence to contradict his findings, because the only evidence offered at trial supported the Butlers’s expert opinions and conclusions, and because the Butlers’s expert sufficiently testified as to the facts and data that formed the basis of his opinion, the reliability of the principles and methods he applied to the circumstances surrounding the collision, and the accuracy of his calculations and analysis, the Butlers’s expert opinions were grounded in the methods and procedures of science, not merely his subjective or unsupported speculation, and the circuit court therefore did not err in admitting and relying on the expert testimony. (3) Because MDRS and Stricklin failed to object to the Butlers’s claim for damages for Carla’s wedding band and cell phone or to otherwise raise the issue before the circuit court, MDRS and Stricklin waived their right to raise the issue on appeal. (4) Because the circuit court specifically found that the Butlers had jointly incurred damages for the

replacement of Carla's cell phone and the repair of her wedding band, the circuit court erred in denying the Butlers's request for said damages. (5) Because the evidence was undisputed that Carla's pain, suffering, and loss of enjoyment of life were a direct result of the collision, the circuit court did not err in denying MDRS and Stricklin's request for a remittitur as to Carla's non-economic damages award. (6) Because the record reflected substantial undisputed evidence that supported Steven's claim for loss of consortium and because the circuit court specifically found that Steven suffered a loss of consortium, the circuit court erred in failing to grant Steven an additur for his loss of consortium claim. Therefore, on direct appeal, the Court of Appeals affirmed the judgment of the Rankin County Circuit. On cross-appeal, the Court of Appeals reversed and rendered in part and reversed and remanded in part the judgment of the Rankin County Circuit Court.

On Direct Appeal: Affirmed. On Cross-Appeal: Reversed & Rendered in Part; Reversed & Remanded in Part - 2022-CA-00176-COA (Jan. 9, 2024)

Opinion by Judge Smith

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

Richard T. Conrad III for Appellants - John W. Kitchens & Edgar Zachariah Adkins for Appellees

Briefed by [Isabella Escobedo](#)

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

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