

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 4, 2024**SUPREME COURT - CIVIL CASES****HAYES V. THOMAS****CIVIL - ELECTION CONTEST**

CIVIL PROCEDURE - APPLICABILITY - ELECTION CONTEST - Pursuant to Miss. R. Civ. P. 81(a)(4), proceedings pertaining to election contests are subject to limited applicability, which are generally governed by statutory procedures

CIVIL PROCEDURE - ELECTION CONTEST - DEFAULT JUDGMENT - Pursuant to Miss. Code Ann. § 23-15-951, default judgment is precluded in election contests as a designated circuit judge must hold a hearing for the contest to allow the contestant to satisfy their burden of proof regarding the election results

CIVIL PROCEDURE - ELECTION CONTEST - STATUTORY SILENCE - When a clear statutory requirement is ignored, the *Vining v. Miss. State Bar Ass'n* holding pertaining to the applicability of the Rules of Civil Procedure when a statute is silent on a matter does not apply

FACTS

In June 2021, Alice Thomas and Levon Hayes ran against each other for Ward 4 Alderman of Coldwater. Thomas won the general election. Hayes filed an election contest under Miss. Code Ann. § 23-15-951, and a special judge was appointed to preside over the contest. Both parties agreed the election results were potentially invalid. A special general election was held where Hayes was declared the victor. Thomas subsequently contested the results, and the same special judge was appointed over her contest. Hayes was personally served with Thomas's contest and a Rule 4 summons. Hayes did not file an answer or respond. The circuit court granted Thomas a default judgment against Hayes, which declared Thomas the victor of the election and mandated that she be sworn in immediately. Hayes appealed.

ISSUE

Whether the circuit court erred in granting a default judgment for Thomas in a general election contest.

HOLDING

Because Thomas sent a Rule 4 summons to Hayes instead of holding the hearing with a special judge, the circuit court erred in granting default judgment for Thomas. Therefore, the Supreme Court reversed and remanded the judgment of the Tate County Circuit Court.

Reversed & Remanded - 2023-EC-00229-SCT (Apr. 4, 2024)

En Banc Opinion by Justice Ishee

Hon. Betty W. Sanders (Tate County Circuit Court)

John R. Reeves for Appellant - Thomas A. Waller for Appellee

Briefed by [Youssef Kishk](#)

Edited by [Robert "Duncan" Jones](#) & [Emily Phillips](#)

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STATE V. ALDRICH

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - MOTION PRACTICE - INTERVENTION - Upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties

CIVIL PROCEDURE - PLEADINGS - ERROR - In the absence of meaningful argument and citation of authority, the Supreme Court generally will not consider the assignment of error

PROPERTY - PUBLIC TRUST - BOUNDARY CHALLENGE - In an action to challenge a boundary drawn under Miss. Code Ann. §29-15-7, the State shall have the burden of proof by a preponderance of the evidence that any such land is subject to the public trust regardless of whether the judicial proceedings are commenced by the State or by the individual landowner

PROPERTY - COASTAL LAND - ARTIFICIAL ACCRETIONS - Accretions caused by third-party strangers to the upland title will vest in the upland owner

PROPERTY - EQUITABLE DEFENSES - ESTOPPEL - The doctrine of equitable estoppel is not applied except when to refuse it would be inequitable

FACTS

In a dispute over approximately one acre of coastal land in Biloxi, John Aldrich and the State of Mississippi disagreed over whether the subject property was Aldrich's or State-owned tideland. The primary source of conflict was the map the secretary of state published in 1994 that demarcated the boundaries between private property and Public Trust Tidelands. The secretary published the map according to the 1989 Public Trust Tidelands Act which instructed the secretary to depict the boundary as the 1973 mean high water line. The secretary, however, drew the boundary based on the historic mean high water line of 1851. Via the map, the secretary designated the subject property as State-owned tideland. Aldrich disagreed with the designation however, leading him to challenge the relevant boundary and the secretary's map in 1998. He alleged that the secretary failed to comply with the guidelines which allowed the State to improperly assert dominion over the property. The State then filed a counterclaim, alleging it held fee simple title to the property according to the Public Tidelands Trust. The case idled for over a decade until the State filed a motion to dismiss for lack of prosecution in 2014. The chancery court dismissed the 1998 claim with prejudice, citing no plaintiff response to the State's motion to dismiss. The court did not, however, address the State's counterclaim. In 2015, the Peoples' Bank of Biloxi, acting as the conservator for Aldrich, filed an answer to the State's counterclaim. The answer contained essentially the same claims as the original challenge listed as defenses. In October 2017, the City of Biloxi, Harrison County, and Biloxi Public School District ("Intervenors") filed motions to intervene based on taxation authority and filed answers to the State's counterclaim. In November 2017, Aldrich filed his answer to the State's counterclaim and invoked the 1784 Spanish land grant as a defense to the State's claim to fee simple title. After trial in 2022, the chancery court found that the 1784 Spanish land grant was valid and vested title in Aldrich and that the property was created by artificial filling. Furthermore, the chancery court adjusted the tideland boundary to reflect the shoreline nearest July 1, 1973, the effective date of the Coastal Wetlands Protection Act. The State appealed.

ISSUES

Whether the chancery court erred by (1) allowing governmental parties to intervene and participate in litigation when they had no interest in the property other than taxation authority; (2) allowing Aldrich and Intervenors to challenge the secretary's map after Aldrich's claim had been dismissed with prejudice; (3) finding that the Spanish land grant at issue was valid and therefore confirmed title to the property on Aldrich; (4) finding that the deposition of oyster shells and dredge spoils created the property, rendering it Aldrich's; and (5) finding that the property was not Public Trust Tidelands.

HOLDING

(1) Because the Intervenors had multiple real property and governmental concerns dependent on the outcome of the case which could not be adequately represented by another party to the action, the trial court did not err by allowing governmental parties to intervene and participate in litigation. (2) Because the State failed to cite any authority in its briefs to support its contentions that the dismissal of Aldrich's challenge had preclusive effect and prevented Aldrich

from challenging the boundary as a defense to the State's counterclaim, the issue was waived. (3) Because in 1783 Great Britain ceded to Spain the territory which now comprises the part of Mississippi lying south of the 31st parallel, including the subject property, and because the Spanish king issued the land grant conveying the subject property to a private owner in 1784 before Spain ceded the Mississippi coast to France in 1800, the trial court did not err by finding that the Spanish land grant at issue was valid and vested title in Aldrich. (4) Because substantial evidence showed the deposition of both the oyster shells and the dredge spoils was done prior to 1973 either pursuant to a constitutional legislative enactment or for a higher public purpose, the trial court did not err by amending the boundary to reflect the 1973 high water line. (5) Because the Supreme Court established that the State had no claim to the subject property without applying the doctrine of equitable estoppel, the Supreme Court refused to apply the doctrine and declined to address whether the trial court erred by finding that the property was not Public Trust Tidelands. Therefore, the Supreme Court affirmed the judgment of the Harrison County Chancery Court.

Affirmed - 2022-SA-01088-SCT (Apr. 4, 2024)

Opinion by Justice Ishee

Hon. James B. Persons (Harrison County Chancery Court)

Karl Crawford Hightower & Katherine Hewes Hood for Appellants - David A. Wheeler, Tim C. Holleman, Michael E. Whitehead, Gerald Henry Blessey, Candace C. Wheeler, Peter C. Abide, Patrick T. Guild, Henry N. Dick III, & Hollis Taylor Holleman for Appellees

Briefed by [Reynolds Ward](#)

Edited by [Emily Kaplan](#) & [William Davis](#)

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SUPREME COURT - CRIMINAL CASES

ARCHIE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - ALIBI DEFENSE - CORROBORATION - To assert an alibi defense or to obtain an alibi instruction, a defendant must put on corroborating evidence and provide to the court written notice of intent to assert an alibi defense, but this requirement may also be satisfied when the defendant takes the witness stand in their own case-in-chief at trial, subject to cross-examination, and testifies that they were not present when the crime was committed

CRIMINAL PROCEDURE - ALIBI DEFENSE - BURDEN OF PROOF - The State does not have to disprove an alibi but rather must prove beyond a reasonable doubt that the accused was present at the time and place testified about and that they did commit the alleged crime

CRIMINAL PROCEDURE - REASONABLE DOUBT - JURY INSTRUCTION - Where a jury is adequately instructed on reasonable doubt, it is not reversible error for the court to refuse to give a defense instruction on it

EVIDENCE - AUTHENTICATION - PHOTOGRAPHS - There is no requirement that a photograph be authenticated or sponsored by the photographer, rather any person with the requisite knowledge of the facts represented in the photograph may authenticate it

CRIMINAL PROCEDURE - ROLE OF THE JURY - WEIGHT OF EVIDENCE - The jury is the judge of the weight of the evidence and the credibility of witnesses

APPELLATE PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - ELEMENTS - To overcome the sound-trial-strategy presumption on an ineffective-assistance-of-counsel claim, the defendant must show that their counsel's performance was deficient below an objective standard of reasonableness and that this deficiency prejudiced the defense such that there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the trial would have been different

FACTS

Ridgeland police responded to a “shots fired” call at a Party City store, where Joshua Archie entered through the employee entrance, demanded and robbed money from the employees on shift, fled through the employee doors, and drove away in a white SUV, which had been witnessed pulling up behind the store earlier that night. During the robbery, store manager Bobby Adams had been shot, and store manager Regina Blake gave the gunman the money at the urging of store employee Undra Ward, who later confessed involvement and agreed to testify against Archie. Ward testified that, while planning the robbery the night before, Archie planned to steal and use a nearby white SUV, which was seen fleeing the crime scene but was later dumped. Surveillance video showed a truck belonging to Archie’s aunt, Patricia Morris, leaving the white SUV’s dump site. Morris testified that she had picked up her daughter from work and then picked up Archie, who was on foot near the dumpsite, which was supported by their phone records with nearby cell towers. Archie was arrested, and after taking a DNA sample, crime scene analysts found his sample consistent with the DNA profile in the white SUV. Archie testified in his own defense and denied involvement in the capital murder, stating that at the time of the murder, he was at home with his mother and sister, neither of whom testified, and was picked up by his aunt Morris after leaving home at eleven o’clock p.m. FBI Special Agent Charles Williams testified that, between ten and eleven-thirty p.m., Archie’s phone contacted a tower seven times within reach of Archie’s home but not Party City, the scene of the robbery. The jury found Archie guilty of both conspiracy and capital murder. He moved for a judgment notwithstanding the verdict or new trial, which the court denied. Archie appealed.

ISSUES

Whether (1) the trial court erred by refusing Archie’s requested instruction on his alibi theory of defense, (2) the trial court erred by refusing Instruction D-1 on reasonable doubt, (3) the trial court erred by admitting an unauthenticated photograph of Archie, (4) the verdict was against the overwhelming weight of the evidence, and (5) Archie’s trial counsel was ineffective

HOLDING

(1) Because the jury heard strong evidence that the robbery was an inside job between Ward and Archie and that the latter was shown by DNA evidence and cell phone records to have been in and around the getaway vehicle and the crime scene, and because the jury did not believe Archie’s defense but did believe beyond a reasonable doubt that Archie murdered Adams, and because the jury was properly instructed on the elements of capital murder, the lack of an instruction of Archie’s alibi theory of defense did not affect the verdict and thereby did not constitute per se reversible error. (2) Because Instruction C-2 already contained reasonable doubt, and because D-1 defined reasonable doubt, and because the definition of reasonable doubt is not necessary to decide this issue on appeal, the denial of Instruction D-1 on reasonable doubt was within the discretion of the trial court and did not constitute reversible error. (3) Because a former employer of Archie identified him both in the photograph and in the courtroom by his dreadlocks, and because any person with the requisite knowledge of the facts represented in the photograph may authenticate it, the State satisfied its burden of making a prima facie showing, and the court did not abuse its discretion by admitting the photograph into evidence. (4) Because the facts of the case went before the jury, and it rejected Archie’s theory of the case, and because the jury was the judge of the weight of evidence and the credibility of witnesses, the verdict was not against the overwhelming weight of the evidence. Finally, (5) because Archie presented no basis in the law or the record to support deficiency of counsel due to COVID-19 fears and a desire to shorten the length of the trial, and because counsel’s choice of whether to call and how to question witnesses fell within sound trial strategy, Archie’s claim of ineffective-assistance-of-counsel was without merit. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

DISSENT

Justice Coleman argued Mississippi law required an alibi defense jury instruction because the record supported Archie’s testimony through the phone records, which did not reach the scene of the crime. Justice Coleman argued that failing to supply a jury instruction was not a harmless error and that such an analysis is wholly inappropriate in the instant case. He argued that the majority incorrectly dismissed the credibility of Archie’s testimony and usurped the job of weighing evidence from the jury.

Affirmed - 2022-KA-00326-SCT (Apr. 4, 2024)

En Banc Opinion by Justice Chamberlin - Dissent by Justice Coleman
Hon. Steve S. Ratcliff III (Madison County Circuit Court)

Hunter N. Aikens & George T. Holmes (Pub. Def. Office) for Appellant - Ladonna C. Holland (Att’y Gen. Office) for Appellee
Briefed by [Jonathan Gandara](#)
Edited by [Katie Shaw](#) & [Emily Phillips](#)

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MISSISSIPPI SUPREME COURT DECISIONS – APRIL 2, 2024

SUPREME COURT - CIVIL CASES

BARKER V. IVORY

CIVIL - ELECTION CONTEST

APPELLATE PROCEDURE - FAILURE TO RAISE ISSUE - PROCEDURAL BAR - An issue must be first presented to the trial court before it is raised to the appellate court

ELECTION LAW - QUALIFICATIONS - RESIDENCY - Miss. Code Ann. § 23-15-300(1) provides a candidate for any municipal office must be a resident of municipality that he or she seeks to represent in such office for two (2) years immediately preceding the day of the election

ELECTION LAW - RESIDENCY - DOMICILE - In Mississippi, for the purposes of elections, residency and domicile are synonymous

ELECTION LAW - RESIDENCY - DOMICILE - Even where a party has two residences at different seasons of the years, that will be esteemed his domicile which he himself selects, or describes, or deems to be his home, or which appears to be the center of his affairs, or where he votes or exercises the rights and duties of a citizen

FACTS

Albert F. Barker, Jr. submitted an application to run as the democratic candidate for Alderman of Ward 3 in Aberdeen. In his application, Barker claimed to reside in Aberdeen. Viki Eggers Mason petitioned the Democratic Municipal Committee of the City of Aberdeen objecting to Barker’s qualifications because he did not satisfy the residency requirement of Miss. Code Ann. § 23-15-300(1). Mason claimed Barker resided in Georgia during the applicable two years. Mason filed a petition for judicial review in the Monroe County Circuit Court and argued Barker was not a qualified candidate. The trial court agreed, granted the petition, and entered a bench opinion and final judgment. Barker appealed.

ISSUES

Whether the circuit court erred by (1) finding the petition objecting to appellant’s qualifications was valid and (2) finding Barker was not a qualified candidate for Alderman of Ward 3 in Aberdeen under Miss. Code Ann. § 23-15-300(1).

HOLDING

(1) Because Barker failed to raise the validity of the petition to the trial court, the circuit court did not err in procedurally barring the issue. (2) Because Barker was not domiciled in Aberdeen, the circuit court did not err in finding Barker failed to satisfy the two-year residency requirement under Miss. Code Ann. § 23-15-300(1). Therefore, the Supreme Court affirmed the judgment of the Monroe County Circuit Court.

Affirmed - 2024-EC-00347-SCT (Apr. 2, 2024)

En Banc Opinion by Justice Griffis

Hon. Larry E. Roberts (Monroe County Circuit Court)

Kaylyn Havrilla McClinton for Appellant - Sarah Anne Schnaithman for Appellees

Briefed by [John Walker Webb](#)

Edited by [Brandon Peterson](#) & [William Davis](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 2, 2024

COURT OF APPEALS - CIVIL CASES

BROWN V. BLACK

CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - FINAL ORDER - CERTIFICATION - Even when certification is lacking, an order disbursing attorney's fees may qualify as a final, appealable judgment

CIVIL PROCEDURE - APPEALS - JURISDICTION - An appeal shall be dismissed if the notice of appeal was not timely filed because the appellate court lacks jurisdiction

CIVIL PROCEDURE - APPEALS - NOTICE- A notice of appeal must be filed within 30 days after the date of entry of the order or judgment appealed from

CIVIL PROCEDURE - FINAL ORDER - OPEN ESTATE - An order that finally resolves a claim against an estate is final and appealable although the estate remains open

WILLS & ESTATES - BENEFICIARIES - REIMBURSEMENT - A trustee is entitled to be reimbursed out of the trust property for expenses incurred in the administration of the trust, including the defense or prosecution of any action, whether successful or not, unless the trustee is determined to have willfully or wantonly committed a material breach of trust

FACTS

Elaine Brown, as co-trustee of Lamar W. Powell's estate, sought to recover attorney's fees after complicated litigation regarding who was to be executor and successor executor: she or Thea Hayes Williams-Black. After failing to respond to documentation requesting she fulfill her duty as trustee, she was named co-trustee, and Black was named trustee. She appealed to the Supreme Court, and all estate issues were settled except for the issue of attorney's fees, which was held in abeyance. In 2021, both an original and amended order dealing with the issue of attorney's fees were filed, neither of which reimbursed Brown's full attorney's fees. The amended order corrected minor errors from the original order but did not contain the required certification of finality. The amended order was certified and entered in 2022, awarding Brown only \$3,199.28. Aggrieved by the decision, Brown filed her notice of appeal eight days after the certification.

ISSUES

Whether (1) the 2021 amended order was interlocutory, and (2) the Court of Appeals lacked jurisdiction over the appeal.

HOLDING

(1) Because the 2021 amended order resolved all fact issues of attorney's fees, the 2021 amended order was a final appealable order. (2) Because Brown did not timely file her appeal, the Court of Appeals lacked jurisdiction over the appeal. Therefore, the Court of Appeals dismissed the appeal.

Appeal Dismissed - 2022-CA-00869-COA (Apr. 2, 2024)

Opinion by Judge Emfinger

Hon. Deborah J. Gambrell (Forrest County Chancery Court)

James Williams Janoush for Appellant - Timothy Lee Murr & Rebecca L. Hawkins for Appellee

Briefed by [Caroline Byrd](#)

Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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EATON V. HANEY

CIVIL - CONTRACT

ADMINISTRATIVE LAW - APPEALS - SUFFICIENCY OF EVIDENCE - The Court of Appeals will not disturb a chancery court's factual findings when supported by substantial evidence unless the court abused its discretion, was manifestly wrong, clearly erroneous, or applied an erroneous legal standard

CONTRACTS - DAMAGES - EVIDENCE - When damages have occurred, mere uncertainty as to the amount does not preclude recovery; all that can be required is that the evidence, such certainty as the nature of the particular case may permit, lay a foundation that will enable the trier of fact to make a fair and reasonable estimate of the amount of damage

CONTRACTS - DAMAGES - SUFFICIENT PROOF - A reasonable basis for computation of damages and the best evidence obtainable under the circumstances of the case that will enable the trier of fact to arrive at a fair approximate estimate of the loss

ADMINISTRATIVE LAW - APPEALS - FAILURE TO CITE - Any failure to cite supporting legal authority precludes consideration of an issue on appeal

CONTRACTS - MISCONDUCT - ATTORNEY'S FEES - Where a party's intentional misconduct causes the opposing party to expend time and money needlessly, then attorney's fees and expenses should be awarded to the wronged party

FACTS

In May 2017, James Dexter Haney and Kathryn Mari Haney entered into a written agreement with Cheryl Eaton to purchase Eaton's property, which Eaton purchased through an owner-financed deed of trust. Eaton and the Haney's originally came to an oral agreement to pay Eaton a fixed monthly payment, determined by Eaton, for fifty months in exchange for property ownership. Kathryn found an online contract used to formalize the verbal agreement, and it was edited to demonstrate the parties' intent to buy and sell the property according to the terms orally agreed upon. Kathryn testified that Eaton came by her place of employment and signed the agreement in her presence. Thereafter, the Haney's moved into a house on the property and made multiple improvements to the property at their own expense. Eaton testified that she had paid off the mortgage and in 2019, decided to move back to the property. Eaton did not notify the Haney's of her decision, however, until October 2021. Kathryn contacted Eaton in July 2021 to discuss conveying the property since they had completed the payments set forth in their agreement., Eaton, however, told Kathryn that she wanted more money, and the parties reached a verbal agreement. Despite the completion of the payments and the additional amount, Eaton conveyed the property to her niece, Amber Longo, by a quitclaim deed in October 2021. Longo filed an eviction action against the Haney's, which caused the Haney's to sign a new rental agreement and move to a different home. The Haney's then filed a complaint to enforce the contract and for other relief, followed by a motion for default judgment against Longo and a restraining order against Eaton. The chancery court entered a default judgment against Longo, set aside the quitclaim deed, reserved ruling on the damages, and granted the Haney's a temporary restraining order and preliminary injunction against Eaton. A trial on the Haney's' complaint was held, and the court ordered Eaton to execute a warranty deed conveying the title to the Haney's and awarded the Haney's damages against Eaton and Longo jointly and severally. Eaton appealed.

ISSUES

Whether the chancery court erred in (1) finding that there was a signed contract between the parties for the sale of real property and (2) awarding damages to the Haney's without supporting facts or documentation other than Kathryn's testimony.

HOLDING

(1) Because Eaton failed to cite any legal authority in support of her contention that the signed written agreement produced by the Haney's was not a valid contract, Eaton's claim was without merit on appeal. (2) Because the chancery court's judgment only totaled the exact amount of damages requested for the deposit, rent, and moving expenses for the Haney's' new lease caused by Longo's eviction action, and because Eaton failed to cite legal authority to support her

argument that the award of attorney’s fees was improper, the chancery court did not err in awarding damages to the Haneys. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court.

DISSENT

Judge Emfinger argued that the majority was incorrect in affirming the chancery court’s decision because the award of specific performance would render the Statute of Frauds meaningless. However, Judge Emfinger did find that Eaton had orally agreed to sell the land to the Haneys and that the Haneys had detrimentally relied upon their agreement. Therefore, the matter should be remanded for the chancery court to consider such damages that may be appropriate.

Affirmed - 2022-CA-00656-COA (Apr. 2, 2024)

Opinion by Judge Smith - Dissent by Judge Emfinger

Hon. Vicki B. Daniels (DeSoto County Chancery Court)

Leslie B. Shumake Jr. for Appellant - Barry W. Bridgforth Jr. for Appellees

Briefed by [Zachary Perez](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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PETTIS V. NE. MISS. ELEC. POWER ASS’N

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - DISCOVERY RULE - The statute of limitations begins to accrue upon discovery of the injury, not upon discovering the cause of the injury; causation is irrelevant in this analysis

CIVIL PROCEDURE - APPEALS - FAILURE TO RAISE AN ISSUE - An appellate court will not review matters on appeal that were not raised at the trial court level

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - SERVICE OF PROCESS - Filing a complaint tolls the statute of limitations, but if the defendant is not properly served within the following 120-day window, then the limitation period resumes running at the end of the 120 days

FACTS

In June 2017, Shawn Pettis was attacked by dogs while reading power meters on assignment by his employer, Northeast Mississippi Electric Power Association (“NEMEPA”). Pettis filed suit against NEMEPA on the last day before the statute of limitations ran, alleging negligence, loss of consortium, and intentional infliction of emotional distress (“IIED”). Pettis claimed that he had recently learned that someone with NEMEPA had removed notes from the company records warning of dangerous dogs at the job site in an effort to cause him injury. Although he successfully filed suit before the statute of limitations ran, Pettis failed to properly serve NEMEPA within the following 120-day window. The circuit court dismissed the negligence claim with prejudice because it was barred by the Workers’ Compensation Act. The circuit court also dismissed the loss of consortium and IIED claims without prejudice because Pettis failed to properly serve NEMEPA within the requisite timeframe. Pettis did not appeal these dismissals; instead, he filed another complaint against NEMEPA, alleging the same claims. NEMEPA moved to dismiss the second complaint, to which Pettis did not respond. The circuit court dismissed the complaint, holding that the negligence claim was barred by res judicata and that the loss of consortium and IIED claims were barred by the statute of limitations. Pettis filed a motion for reconsideration asserting the discovery rule. Pettis argued that the limitations period should not have begun running until he learned about the alleged actions of NEMEPA nearly three years after the incident. The court denied his motion to reconsider. Pettis appealed.

ISSUES

Whether (1) the circuit court erred in ruling the discovery rule inapplicable and (2) the statute of limitations was tolled under the fraudulent concealment doctrine.

HOLDING

(1) Because Pettis’s injuries were not latent, hidden, or undiscoverable, the discovery rule did not apply. (2) Because Pettis never raised the fraudulent concealment doctrine at the trial level, this argument was waived on appeal. Therefore, the Court of Appeals affirmed the trial court’s decision.

Affirmed - 2022-CA-00688-COA (Apr. 2, 2024)

Opinion by Presiding Judge Wilson

Hon. Kent E. Smith (Lafayette County Circuit Court)

Terris Carton Harris for Appellants - J. Douglas Ford & Laura Elizabeth Nichols Fisher for Appellees

Briefed by [Benjamin Duddy](#)

Edited by [Summie Carlay](#) & [William Davis](#)

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COURT OF APPEALS - CRIMINAL CASES

HAND V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - KIDNAPPING - ELEMENTS - Pursuant to Miss. Code Ann. § 97-5-53, kidnapping is defined as any person who, without lawful authority and with or without intent to secretly confine, shall forcibly seize and confine any other person, or shall inveigle or kidnap any vulnerable person or any child under the age of sixteen years against the will of the parents or guardian or person having the lawful custody of the child

CRIMINAL LAW - CHILD EXPLOITATION - KNOWING OF POSSESSION - Pursuant to Miss. Code Ann. § 97-5-33(5), no person shall, by any means including computer, knowingly possess or knowingly access with intent to view any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit content

FACTS

Mark Hand was family friends with a woman and her ten-year-old daughter, whom Hand babysat. Many of the woman’s friends described her daughter and Hand’s relationship as inappropriate. The woman testified that Hand began to act strange and different around her daughter. On one occasion, Hand approached the woman and told her he believed another man had “messed with” her daughter. The woman believed Hand was trying to admit that he had touched her daughter inappropriately. The daughter denied that anyone touched her inappropriately and called Hand “crazy.” The woman then told Hand to stay away from her daughter. Hand continued to contact the daughter, continued to see her, and sent her a nude photo. After a period of concerning behavior and multiple incidents involving Hand, Kids Hub in Hattiesburg arranged an interview with the daughter. She admitted someone touched her inappropriately. Two days after the interview at Kids Hub, the daughter was reported missing, and law enforcement found her with Hand at his property several miles from her home. Hand was arrested for delinquency of a minor, and officers collected three cell phones in Hand’s possession as evidence. Hand claimed that several people may have sexually abused the daughter, but he denied that he had any sexual contact with her. Hand also claimed that he believed the daughter was twenty years old. One of the cell phones in Hand’s possession contained nineteen pornographic images of Hand and the daughter. The phones also showed multiple documents identifying Hand as the phone's owner and multiple conversations, sexual in nature, between Hand and the daughter. The phone also contained a message in which the daughter said she was eleven years old. At trial, Hand was found guilty of kidnapping and child exploitation and was sentenced to serve a combined seventy years in the custody of the Mississippi Department of Corrections. Hand was additionally ordered to register as a sex offender. Upon being denied a new trial, Hand appealed.

ISSUES

Whether the trial court erred in convicting Hand of (1) kidnapping and (2) child exploitation.

HOLDING

(1) Because Hand inveigled a minor under the age of sixteen against her mother's will, and because Hand kept the minor on his property until the police found them together, the trial court did not err in convicting Hand of kidnapping. (2) Because Hand was identified as the individual in the pornographic photos with the minor, and because he was the primary user of that phone, the trial court did not err in convicting Hand of child exploitation. Therefore, the Court of Appeals affirmed the judgment of the Covington County Circuit Court.

Affirmed - 2022-KA-00819-COA (Apr. 2, 2024)

Opinion by Judge Greenlee

Hon. Stanley Alex Sorey (Covington County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Allison Horne (Att'y Gen. Office) for Appellee

Briefed by [Forrest Carman](#)

Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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