

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 25, 2024***SUPREME COURT - ORDERS*****MORTON V. STATE****EN BANC ORDER****ORDER**

Bryan Morton filed his second motion for Leave to Proceed in the Trial Court. The Supreme Court found Morton's application untimely pursuant Miss. Code Ann. § 99-39-5 and barred as successive pursuant to Miss. Code Ann. § 99-39-27. The Supreme Court further found the filing to be frivolous and subsequently warned Morton that future frivolous filings may result not only in monetary sanctions but also in restrictions on filing applications for post-conviction collateral relief (or pleadings in that nature) in forma pauperis. Therefore, the Supreme Court denied Morton's application.

OBJECTION IN PART

Presiding Justice King agreed that Morton's application for post-conviction relief lacked merit but disagreed with the Supreme Court's finding that the application was frivolous since Morton's application contained reasonable arguments. He further argued that the threat of monetary sanctions and restrictions on future filings would serve only as a way to punish or preclude a defendant from his or her lawful right to appeal. Rather, he argued that the Supreme Court should only deny or dismiss motions that lack merit.

Denied - 2018-M-00541 (Apr. 22, 2024)

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

Briefed by [Stephanie Iken](#)

Edited by [Katie Shaw](#) & [Emily Phillips](#)

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PARKS V. STATE**EN BANC ORDER****ORDER**

George Lee Parks filed an Application for Leave to Proceed in the Trial Court. The Supreme Court considered the application successive because Parks filed a previous petition motion that was denied. The Court stated that the issue raised by Parks in the second application was raised on direct appeal in his Petition for Writ of Certiorari and in the Court of Appeals decision on his case. Further, Parks's petition was time-barred, successive, and frivolous, without exception under Miss. Code Ann. § 99-39-5 and -27. Therefore, the Supreme Court denied the petition and warned Parks that future frivolous filings would result in losing the ability to file applications for post-conviction relief in forma pauperis.

OBJECTION IN PART

Presiding Justice King opposed the Supreme Court's finding that the filing was frivolous and opposed the order warning Parks against filing further frivolous petitions for post-conviction relief in forma pauperis. He argued that the application

presented reasonable arguments, and thus, the application was not made with no hope of success. Further, he argued the imposition of monetary sanctions on a criminal defendant proceeding in forma pauperis only served to punish or preclude that defendant from his lawful right to appeal.

Denied with Sanctions Warning - 2018-M-00739 (Apr. 25, 2024)

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

Briefed by [Maggie Crain](#)

Edited by [Robert “Duncan” Jones](#) & [William Davis](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 23, 2024

COURT OF APPEALS - CIVIL CASES

BRECHEEN V. BRECHEEN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - VISITATION - FAMILY VIOLENCE - Miss. Code Ann. § 93-5-24(9)(a)(i) authorizes a trial court to restrict visitation from “a parent who has a history of perpetrating family violence” and provides that family violence can be found if there is “a pattern of family violence against . . . the party making the allegation or a family household member of either party”

FAMILY LAW - CHILD SUPPORT - CALCULATION - A trial court may rely upon recent paycheck stubs admitted into evidence to calculate monthly child support when a party fails to supplement his Miss. Unif. Chancery Ct. R. 8.05 financial disclosures in accordance with his testimony

FAMILY LAW - DIVORCE - MARITAL PROPERTY - Marital property is defined as any and all property acquired or accumulated during the marriage and is subject to equitable division unless a party proves that such property is attributable to one of the parties’ separate estates prior to the marriage or outside the marriage

FAMILY LAW - AWARD OF TAX EXEMPTION - FACTORS - When awarding tax exemptions, a trial court can consider the following factors: (1) the exemption’s value at the marginal tax rate of each parent; (2) each parent’s income; (3) the child’s age and the length of the available exemption; (4) the percentage of the cost of supporting the child undertaken by each parent; and (5) the financial burden undertaken by each parent under the case’s property settlement

FACTS

Clayton Brecheen and Mallory Brecheen married in August of 2018 and had a child together in January of 2019. Mallory testified at trial that Clayton began physically abusing her on their honeymoon when she was already pregnant with Adam, and her supervisor testified that she saw bruising and other marks on the young mother and counseled her regarding the physical attacks. Moreover, Mallory’s mother and father testified that Clayton physically attacked Mallory’s mother and father during a June event which preceded Mallory’s filing for divorce. The morning following the incident, Mallory filed criminal domestic abuse charges against Clayton in the Lincoln County Justice Court. Mallory left Clayton and filed for divorce on the statutory ground of habitual cruel and inhuman treatment, including spousal domestic abuse. Ultimately Mallory withdrew her fault ground, and the parties agreed to a divorce on the ground of irreconcilable differences. A trial was set to decide custody, child support, visitation, and equitable distribution. Throughout the proceedings, Mallory was employed as a teller at Trustmark National Bank. At the start of the proceedings, Clayton was employed at an oil firm, but in August 2020, Clayton was laid off from his job with the oil firm and received a severance package. Next, Clayton worked at Apex Construction LLC, and then, Clayton started his own roofing business. Clayton filed two Miss. Unif. Chancery Ct. R. 8.05 financial statements: his first in August 2019 and his second (updated) in August 2020. On his financial statement, dated August 2020, Clayton disclosed that his income was \$1,500 per month. But during trial in April 2021, he admitted that amount was no longer accurate since “it’s all speculative,” and his “pay

varies check to check, week to week, whatever.” Three months later, on the last day of trial, Clayton testified that his income from his roofing business was “roughly \$4,000 a month before taxes.” Clayton did not update his financial statement to reflect his purported testimony. Paycheck stubs from July 2020 through March 2021 from Clayton’s employment with Apex Construction were admitted into evidence. Clayton testified at trial that he received the funds from his severance package before the couple was actually divorced in September of 2020. In its order, the chancery court restricted and placed conditions upon Clayton’s visitation with the minor child due to his history of family violence, produced a calculation of his monthly child support based upon the admitted paycheck stubs from Apex Construction, classified the severance package as marital property and divided it equally among the parties, and awarded Mallory the ability to claim the child “in odd years” and Clayton the ability to claim the child “in even years” for income tax purposes. Clayton appealed, and Mallory cross-appealed.

ISSUES

Whether the chancery court abused its discretion in (1) restricting and placing conditions upon Clayton’s visitation; (2) using Clayton’s paycheck stubs to calculate his monthly child support; (3) classifying the severance package as marital property and dividing it equally among the parties; and (4) allowing Clayton to claim the minor child for taxes every other year.

HOLDING

(1) Because the testimony presented at trial clearly established a pattern of family violence by Clayton against Mallory, the chancery court did not abuse its discretion by restricting and placing conditions upon Clayton’s visitation. (2) Because Clayton’s paycheck stubs from July 2020 through March 2021 were admitted into evidence, and because Clayton failed to update his Miss. Unif. Chancery Ct. R. 8.05 financial statement to reflect his testimony, the chancery court did not abuse its discretion by using Clayton’s paycheck stubs to calculate his monthly child support. (3) Because the funds from the severance package were acquired or accumulated during the marriage and Clayton offered no proof to rebut the marital property presumption, the chancery court did not abuse its discretion by classifying the severance package as marital property and dividing it equally among the parties. (4) Because the parents divorced so early in the child’s life and made significant contributions to the financial well-being of the child, the chancery court did not abuse its discretion by allowing Clayton to claim the minor child for taxes every other year. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Chancery Court.

On Direct Appeal: Affirmed. On Cross-Appeal: Affirmed - 2022-CA-00190-COA (Apr. 23, 2024)

Opinion by Judge McCarty

Hon. Jaye A. Bradley (Lincoln County Chancery Court)

Jared Frank Evans for Appellant - Elise Berry Munn for Appellee

Briefed by [Joseph Muldrew](#)

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

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CLARK V. McDONALD

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY ORDER - A court will examine a decision regarding an agency’s actions by determining whether the order of an administrative agency (1) was unsupported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the administrative agency to make, or (4) violated some statutory or constitutional right of the aggrieved party

ADMINISTRATIVE LAW - STATE BOARDS & AGENCIES - PROCEDURAL DUE PROCESS - An inmate is entitled to certain due process rights when subjected to disciplinary measures for misconduct, including the right to call witnesses and present documentary evidence in defense

FACTS

Patrick Clark, an inmate in the custody of the Mississippi Department of Corrections (“MDOC”), stabbed inmate Frederick Winston, claiming the stabbing was in retaliation for gang-related threats. Officer Devin Booker witnessed the stabbing, and Clark received a Rule Violating Report (“RVR”). The RVR stated Clark violated Rule C-8, “assaultive action against any person or staff member resulting in serious physical injury.” While Clark denied guilt, claiming self-defense, the next day, he signed the notice for his disciplinary hearing. Clark sought administrative relief through MDOC’s administrative remedy program (“ARP”), requesting that his rule violation be dismissed. Clarke argued that his due process rights were violated because he was denied a request for witnesses at his disciplinary hearing, was illegally detained for fifteen days before his disciplinary hearing, and the decision of the hearing officer was based on insufficient evidence. MDOC’s ARP denied relief. Clark then sought relief in the Sunflower County Circuit Court, which affirmed MDOC’s decision due to Clark’s own admission and the reporting officer’s statements. Clark appealed.

ISSUE

Whether the trial court erred in upholding MDOC’s ARP decision.

HOLDING

Because Clark was given the opportunity to identify and request witnesses and signed the RVR without witness names, because Clark received notice of the RVR the same date the incident occurred, and because Clark was afforded a full and complete disciplinary hearing, the trial court did not err in upholding MDOC’s ARP decision. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Circuit Court.

Affirmed - 2022-CP-01296-COA (Apr. 23, 2024)

Opinion by Chief Judge Barnes

Hon. Margaret Carey-McCray (Sunflower County Circuit Court)

Pro se for Appellant - William R. Collins (Att’y Gen. Office) for Appellees

Briefed by [Reynolds Ward](#)

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

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WHITE V. HOME DEPOT

CIVIL - WORKERS' COMPENSATION

WORKERS’ COMPENSATION - STANDARD FOR ADMISSION - MEDICAL RECORDS - Pursuant to Procedural Rule 2.9 of the Mississippi Workers’ Compensation Commission, the party offering medical records must attach an affidavit with a sworn statement that they are a true, correct, and complete copy of the records received from the medical provider

WORKERS’ COMPENSATION - BURDEN OF PROOF - DISABILITY BENEFITS - To obtain benefits for temporary disability, claimants must be able to prove a loss of wage-earning capacity during the healing period following the injury; to obtain benefits for permanent disability, claimants must offer proof that that their work-related injury caused an impairment that resulted in a loss of wage-earning capacity in order for it to be deemed a permanent disability

WORKERS’ COMPENSATION - TREATMENT - CHOICE OF PHYSICIAN - If employees are treated for their alleged work-related injury by a physician for six months or longer, then that physician shall be deemed the employee’s selection

WORKERS’ COMPENSATION - BURDEN OF PROOF - COMPENSABLE INJURY - Claimants must be able to prove that their injury occurred within the course and scope of their employment in order to be compensated

APPELLATE PROCEDURE - ISSUE PRECLUSION- CITING LEGAL AUTHORITY - In order for an issue to be considered on appeal, one must cite legal authority supporting the claim in one’s briefs

FACTS

In January 2016, Mary Tillman White, a former employee of Home Depot, hurt her back when she was helping a customer lift floor tiles onto a cart. White filed an incident report and saw Dr. Douglas Cannon in March 2016 for a workers’ compensation initial evaluation, where he returned her to work with light-duty restrictions, and Home Depot

accommodated her restrictions by temporarily allowing her to use a mobile cart. That same month, White claimed to have another injury when she was walking to her work area when something in her right side popped. White filed another incident report and continued to see Dr. Cannon but did not inform him of her second injury until August 2016. During her second evaluation in August regarding the March 2016 incident, Dr. Cannon observed only age-related degenerative issues, He released her to full-duty work without restrictions in October 2016 and determined no further treatment was necessary, noting pre-existing degenerative changes but nothing that corresponded to her present complaints. White filed two petitions to controvert in January 2018 for her January 2016 and March 2016 work-related injuries. The claims were consolidated, but Home Depot only admitted compensability for the January 2016 claim. During initial proceedings with the administrative judge (“AJ”), White obtained counsel from two different attorneys who both withdrew as counsel and filed liens against White for services rendered. In February 2022, the AJ entered an order that denied White’s workers’ compensation claim related to the March 2016 incident, including her claims for further medical treatment from the physician of her choice. Additionally, the AJ agreed that her injury from January 2016 was compensable but denied her temporary disability benefits and permanent disability benefits. White subsequently filed a petition in March 2022 for the Mississippi Workers’ Compensation Commission (“MWCC”) to review the AJ’s order, a petition to introduce additional evidence for consideration, and a motion to dismiss the liens imposed on her by her former counsel. The MWCC affirmed the AJ’s order, denied White’s petition to introduce additional evidence, and denied her motion to dismiss the liens filed by her former attorneys. White appealed.

ISSUES

Whether the MWCC erred by (1) improperly excluding evidence presented by White from the evidentiary record at the merits hearing; (2) denying White workers’ compensation benefits in addition to the medical treatment Home Depot voluntarily paid for her work-related injury from January 2016; (3) denying White workers’ compensation benefits for her work-related injury from March 2016; and (4) denying White’s motions to dismiss liens filed against her by her former attorneys.

HOLDING

(1) Because White failed to attach an affidavit with a sworn statement that the medical records she offered to admit into evidence were true, correct, and complete copies received from the medical provider, she failed to follow workers’ compensation procedural rules, and, therefore, MWCC did not err by excluding the evidence. (2) Because White failed to prove that she suffered a loss of wage-earning capacity as a result of her work-related injury from January 2016, because she failed to offer medical evidence to support that she was medically impaired or had permanent work restrictions, and because she continued to be treated by Dr. Cannon for a period of seven months, thereby making him the physician of her choice, she was not entitled to temporary or permanent disability benefits or treatment from a different physician of her choice, and, therefore, MWCC did not err by denying her additional workers’ compensation benefits and further medical treatment for her January claim. (3) Because White’s injury from March 2016 was not sufficiently work-related, and because there was no medical proof to support her claims, the MWCC did not err by denying her workers’ compensation benefits for her March claim. (4) Because White failed to cite legal authority to support her claims that MWCC erred by denying her motions to dismiss the attorney liens in her briefs, she waived consideration of the issue. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers’ Compensation Commission.

Affirmed - 2022-WC-00894-COA (Apr. 23, 2024)

Opinion by Judge Smith

Mississippi Workers’ Compensation Committee

Pro se for Appellant - P. Sharkey Burke Jr. & Terry B. Germany for Appellees

Consolidated with:

Affirmed - 2022-WC-00905-COA (Apr. 23, 2024)

Mississippi Workers’ Compensation Committee

Pro se for Appellant - P. Sharkey Burke Jr. & Terry B. Germany for Appellees

Briefed by [Lydia Cates](#)

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

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COURT OF APPEALS - CRIMINAL CASES

MAI V. STATE

CRIMINAL - FELONY

EVIDENCE - SUFFICIENCY - CHALLENGE - When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REFUSAL - A trial court in Mississippi can refuse a jury instruction if the instruction inaccurately states the law, is covered elsewhere in the instructions, or is without foundation in the evidence

EVIDENCE - ADMISSIBILITY - OTHER CRIMES - Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith; it may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

FACTS

Luan Trong Mai was arrested for sexually abusing his minor daughter, Karen. Mai was indicted for sexual battery of a minor and fondling of a child. Before trial, the State noticed its intent to elicit testimony under Miss. R. Evid. 404(b) from Karen and her sister, Betty, regarding their father's past sexual abuse. Defense counsel objected to this evidence arguing that it was too remote. The trial court granted the State's Miss. R. Evid. 404(b) notice as to both Karen and Betty, with a limiting instruction to be given. At trial, Karen testified about the abuse at issue. She testified that Mai locked the door behind him, forcibly removed her clothes, and inappropriately touched her under the pretext of examining her. Karen also testified that when her mother knocked on the door, Mai told her to dress quickly because they would get in trouble if discovered. Karen and Betty then both testified regarding their father's past sexual abuse. The jury acquitted Mai of the sexual battery charge but found him guilty of fondling a child. Mai was sentenced to 15 years. Subsequently, Mai filed a motion for a new trial, or in the alternative, for judgment notwithstanding the verdict. The trial court denied the motion. Mai appealed.

ISSUES

Whether (1) the evidence was sufficient to support Mai's conviction for fondling; (2) the trial court's jury instruction was proper; and (3) the testimony of previously alleged sexual abuse was admissible evidence.

HOLDING

(1) Because the jury could infer from the evidence that Mai touched Karen to gratify his lust, the evidence was sufficient to support Mai's conviction of fondling a child. (2) Because the jury instruction fairly announced the law, the trial court did not err in giving the jury instruction. (3) Because Betty's and Karen's testimony about prior abuse was admissible to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and because the probative value of the evidence was not substantially outweighed by its prejudicial effect, the trial court did not err in admitting the evidence. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2022-KA-00798-COA (Apr. 23, 2024)

Opinion by Chief Judge Barnes

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

John M. Colette & Sherwood Alexander Colette for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Selena Houston](#)

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

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