

**MISSISSIPPI SUPREME COURT DECISIONS – JUNE 27, 2024****SUPREME COURT - CIVIL CASES****AM. COMP. INS. CO. V. RUIZ****CIVIL - FEDERALLY CERTIFIED QUESTION**

**WORKERS' COMPENSATION - MISS. WORKERS' COMP. ACT - STATUTORY REMEDIES** - Every contract for the insurance of workers' compensation or against liability therefore, shall be subject to the provisions of the Mississippi Workers' Compensation Act instead of any remedy provided by the common law of contracts

**WORKERS' COMPENSATION - MISS. WORKER'S COMP. ACT - LEGISLATIVE INTENT** - The Supreme Court has held that the purpose of the Mississippi Workers' Compensation Act is to protect employees and provide benefits to injured workers; post-injury rescission of a workers' compensation policy would be contrary to this purpose regardless of any material misrepresentation made by the employer

**CIVIL PROCEDURE - ERIE DOCTRINE - ERIE GUESS** - In the absence of a state statute or case law on point, a federal court applying state law will enforce the rule it believes the state court would have chosen if pending there

**FACTS**

Employer Hector Ruiz conducted business performing work as a subcontractor for Jesco, Inc. ("Jesco") when his employee Raul Aparacio fell from a height of more than fifteen feet and was severely injured. Ruiz held a workers' compensation policy with the American Compensation Insurance Company ("ACIC") which immediately began paying benefits to the injured Aparacio. When ACIC's payouts to Aparacio exceeded \$250,000, ACIC sought a declaratory action in federal court seeking to retroactively void the workers' compensation policy alleging that Ruiz materially misrepresented in his policy application that Ruiz's company did not perform work more than fifteen feet above the ground and that if Ruiz had been truthful in the application, ACIC would not have issued the policy. Jesco moved for summary judgment asserting that ACIC was not entitled to void the policy because the Mississippi Workers' Compensation Act ("MCWA") did not provide rescission as a remedy for an employer's material misrepresentation, the MCWA replaced all common law rights and remedies, and while MCWA §71-3-77(1) allowed for cancellation and nonrenewal if certain conditions are met, the MCWA made no provision for rescission. ACIC argued that because MCWA §71-3-77(1) was silent about rescission, ACIC still had the common law right to void the policy. The Federal District Court granted Jesco's motion for summary judgment, emphasizing that the MCWA exclusively governed workers' compensation insurance policies, was in derogation of the common law, and solely existed to provide benefits to injured employees. The District Court made an *Erie* guess that, as a matter of Mississippi law, ACIC was not entitled to the remedy it sought - voiding the policy ab initio. The District Court granted Jesco's motion for summary judgment and dismissed ACIC's claims. ACIC appealed to the United States Court of Appeals for the Fifth Circuit who federally certified a question to the Supreme Court instead of making its own *Erie* guess.

**ISSUE**

Whether the MCWA allowed an insurer to void ab initio a workers' compensation policy based on a material misrepresentation made by an employer.

**HOLDING**

Because the MCWA made no provision for an insurer to void a workers' compensation policy based on a material misrepresentation, and because the MCWA existed to ensure injured workers were compensated, the Supreme Court answered that the federally certified question did not allow insurers to void ab initio a worker's compensation policy based on an employer's material misrepresentation. Therefore, the Supreme Court answered the federally certified question of the United States Court of Appeals for the Fifth Circuit in the negative.

## DISSENT

Justice Coleman argued that the Supreme Court has repeatedly held that the common law remains in effect until abrogated by statute and that for a statute to abrogate the common law, the statute must clearly show the legislature's intent to do so. Therefore, because the statutes cited by the parties and the majority fell short of showing that requisite legislative intent, Justice Coleman would hold that the common law that renders contracts void ab initio in the face of a material misrepresentation remained in effect for Ruiz's workers' compensation policy.

### **Certified Question Answered - 2023-FC-01160-SCT (June 27, 2024)**

Opinion by Justice Maxwell - Dissent by Justice Coleman

Hon. Debra M. Brown (U.S. District Court, Northern District of Mississippi)

Robert P. Thompson & Paul Pacific Blake for Appellant - George E. Dent, Michael Wayne Baxter, Sean Patrick Mount, Michael Madison Taylor, Jr., & Phillip Martin Lemere for Appellees

Briefed by [Jack Furla](#)

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

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## **McNINCH V. BRANDON NURSING & REHAB. CTR., LLC.**

### **CIVIL - WRONGFUL DEATH**

**CIVIL PROCEDURE - CAUSE OF ACTION - ACCRUAL** - Causes of action accrue upon discovery of the injury, not discovery of the injury and its cause; knowledge of the cause of the injury is irrelevant to the analysis, as rather, the inquiry is when the plaintiff knew or should have known of an injury

**CIVIL PROCEDURE - STATUTE OF LIMITATIONS - DISCOVERY RULE** - The discovery rule tolls the statute of limitations for latent injuries, where the plaintiff is precluded from discovering because of the secretive or inherently undiscoverable nature of the wrongdoing in question; while death is not a latent injury, the discovery rule will still operate to toll the statute of limitations when medical records are necessary to discover the negligence and a plaintiff diligently sought those medical records

**CIVIL PROCEDURE - STATUTE OF LIMITATIONS - MEDICAL MALPRACTICE** - Given the inherent complexity of many medical-malpractice cases, the commencement date of the legislatively-enacted limitations period requires a case-by-case analysis

### FACTS

Joel Phillip McNinch Jr. suffered from dementia and other serious health conditions. He was admitted to Brandon Nursing and Rehabilitation Center, LLC ("Brandon Nursing"), on June 7, 2019. In late August 2019, he was admitted to Merit Health Rankin ("Merit Health") "due to some combative behaviors" related to his dementia, and he returned to Brandon Nursing on September 11, 2019. At some point, he developed a decubitus ulcer. He was admitted to St. Dominic Hospital on September 16, 2019 and died the following day. His discharge papers from St. Dominic listed numerous health conditions, and his death certificate noted "septic shock due to Proteus UTI and Bacterium" as the cause of death. His widow, Cheryl McNinch, contacted her attorney shortly after receiving Joel's medical records in December 2019, and the attorney sent Brandon Nursing and Merit Health a notice to file suit on September 3, 2021. The complaint was filed on January 18, 2022. Brandon Nursing and Merit Health filed a motion to dismiss, claiming the two-year statute of limitations barred the action. The trial court converted the motion to dismiss into a motion for summary judgment and granted it to Brandon Nursing and Merit Health, holding the complaint was filed after the expiration of the statute of limitations. McNinch appealed.

### ISSUE

Whether the trial court erred by holding that no questions of material fact existed regarding whether the discovery rule operated to toll the statute of limitations at least until the plaintiff gained access to the decedent's medical records.

### HOLDING

Because McNinch did not have knowledge of negligence until she received Joel's medical records which she diligently sought after his death, there was a genuine issue of material fact as to whether the discovery rule operated to toll the statute of limitations. Therefore, the Supreme Court reversed and remanded the judgment of the Rankin County Circuit Court.

**Reversed & Remanded - 2023-CA-00050-SCT (June 27, 2024)**

Opinion by Presiding Justice Kitchens

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Michael A. Heilman & Edward Taylor Polk for Appellants - W. Davis Frye, Mark P. Caraway, George Clanton Gunn IV & William Harrison Webb for Appellees

Briefed by [Hunter Seidler](#)

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

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## THODEN V. HALLFORD

### CIVIL - REAL PROPERTY

**PROPERTY - TAX SALE - STATUTORY LIEN** - A tax-sale purchaser retains a statutory lien on the property in the event that the sale is declared illegal on some other grounds

**PROPERTY - TAX SALE - NOTICE** - A tax sale that does not meet the statutory notice requirements is void ab initio

**PROPERTY - TAX SALE - CAVEAT EMPTOR** - The purchaser at a tax sale buys strictly under the rule of caveat emptor; in the absence of any statutory provision to the contrary, there is no warranty on the part of the state, or other public body making the sale and if the purchaser's title proves defective for want of compliance with the law in proceedings leading up to the sale or in the conduct of the sale, he has no affirmative remedy other than that which is provided by statute

**CIVIL PROCEDURE - FINAL JUDGMENT - RELIEF** - Miss. R. Civ. P. 54(d) states that, excluding default judgments, every other final judgment should grant the relief to which each party is entitled if such relief is within the jurisdiction of the court to grant, even if the party has not demanded that relief in pleadings

### FACTS

Deborah Hallford owned a house in Jackson County. In 2014, she failed to pay property taxes on the house which led to the house being sold at a tax sale. Pierre Thoden bought the home for \$500 and paid \$133.76 for a clerk's conveyance. After Hallford failed to redeem the property, Thoden received title after he paid the delinquent taxes for 2015-18. Following the receipt of title, Thoden obtained a judgment of possession and began making home improvements. After learning of the tax sale, Hallford filed a complaint to set aside the tax sale claiming due to lack of proper notice under Miss. Code Ann. § 27-43-3; the chancery court ultimately found the sale was void. Thoden then filed a motion to alter or amend the judgment arguing the chancery court erred by denying him a statutory lien and reimbursement for appliances, costs, and expenses on the property. Later in the litigation process, Thoden gave a perpetuation deposition via Zoom before the requisite hearing. During the deposition, Thoden admitted to making improvements to the property and charging \$750 per month for rent for six months. During a hearing in 2021, neither party mentioned the rent Thoden collected nor was rent included in any of the exhibits entered into evidence. After both parties rested and discussions occurred off the record in chambers, Hallford moved to enter Thoden's perpetuation deposition into evidence. Thoden did not object, and the deposition was entered into evidence. The chancery court entered the final judgment on March 22, 2022, finding that Thoden acted at his peril in repairing, improving, maintaining, and paying taxes on the property and denied Thoden's claim for reimbursement. The chancery court also found Thoden was unjustly enriched by \$4,500 for collecting rent at \$750 per month from tenants for six months because he was technically in the nature of a trespasser. In regards to the statutory damages, the chancery court found that Thoden was entitled to the amount he paid in taxes, plus one and one-half percent interest per month. Thoden paid \$500 in taxes on August 31, 2015, where interest at one and one-half percent amounted to \$7.50 per month. The chancery court found that

Thoden was entitled to 64 months of interest through November 30, 2021, a conclusion presented in Hallford’s submitted findings of fact, and Thoden was entitled to a credit of \$980 against the \$4,500 he was ordered to pay Hallford. The chancery court concluded Thoden owed Hallford \$3,520. After the final judgment, Thoden filed a motion to alter or amend the judgment, but it was denied. Thoden appealed.

### **ISSUES**

Whether the chancery court erred by (1) awarding Thoden an inadequate refund pursuant to Miss. Code Ann. § 27-43-3 and an inadequate reimbursement of his statutory lien because it failed to properly calculate statutory damages pursuant to Miss. Code Ann. § 27-45-27; (2) not awarding Thoden nonstatutory damages entered into evidence without objection; and (3) granting Hallford a set-off not pled or requested by Hallford based on monetary amounts not in evidence at the time Hallford rested her case.

### **HOLDING**

(1) Because the chancery court did not account for the four extra months of accrued interest between Hallford’s submission of proposed findings of fact and the date of the final judgment and did not account for the clerk’s conveyance paid by Thoden, and because the tax sale was declared void ab initio which left Hallford unjustly enriched by Thoden paying for the taxes from 2015-18, the chancery court erred by awarding Thoden an inadequate refund and reimbursement. (2) Because the tax sale was void ab initio and Thoden operated at his own risk, the chancery court correctly determined Thoden was not entitled to reimbursement of the cost of repairs, improvements, and maintenance to the property. (3) Because Miss. R. Civ. P. 54(d) allows for relief not requested in the complaint, because Thoden stated in his deposition that he collected \$4,500 in total rent on the property, and because Thoden cited no authority that the evidence was inadmissible at the time Hallford rested her case, the chancery court did not err in granting Hallford a \$4,500 set-off. Therefore, the Supreme Court affirmed in part and reversed and rendered in part the judgment of the Jackson County Circuit Court.

**Affirmed in Part; Reversed & Rendered in Part - 2022-CA-00835-SCT (June 27, 2024)**

Opinion by Justice Ishee

Hon. D. Neil Harris Sr. (Jackson County Chancery Court)

Lewie G. “Skip” Negrotto IV for Appellant - E. Foley Ranson for Appellee

Briefed by [Jarius Colley](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 25, 2024**

### ***COURT OF APPEALS - CIVIL CASES***

#### **ALISHA T. V. MISS. DEP’T OF CHILD PROT. SERVS.**

##### **CIVIL - CUSTODY**

**CIVIL PROCEDURE - APPEALS - ASSIGNMENT OF ERROR** - An appellant must set forth reasons for his arguments and cite authorities in their support, or else the court is under no duty to consider assignments of error

**FAMILY LAW - CUSTODY - ORIGINAL JURISDICTION** - Miss. Code Ann. § 43-21-609 states in part that the youth court shall retain original and exclusive jurisdiction of all matters related to durable legal custody, including, but not limited to, petitions to modify the durable legal custody

##### **FACTS**

Alisha T. was the biological mother of A.B., a three-year-old girl. A.B. lived with her grandmother Penny H. in Hattiesburg in July 2022 when Penny dropped off A.B. with the Mississippi Child Protection Services (“CPS”) and stated that she could no longer care for A.B. CPS contacted Alisha and Eligah B., who was A.B.’s father. Neither Alisha

nor Eligah could pick up A.B., leading her to be considered abandoned and placed in a foster home with Eunice and Ricky C. after a shelter hearing. The Forrest County Youth Court ordered CPS to retain physical and legal custody of A.B. Adjudication hearings in December 2022 and January 2023 found A.B. to be a neglected child, and a disposition hearing established a permanent plan for reunification with her parents, with a concurrent plan for durable legal custody with her foster parents. CPS's January 2023 report highlighted that Alisha had made some progress, including maintaining contact with CPS, completing a mental health assessment, and participating in a parenting class. However, CPS noted that Alisha had not secured appropriate housing and was not consistently visiting A.B. The report also noted that Alisha tested positive for THC and Tramadol in August 2022. In April 2023, a permanency hearing was held to review the progress and to hear CPS's recommendation moving forward. The April 2023 report restated that A.B. was doing extremely well in the home of Eunice and Ricky. Despite improvements in Alisha's employment and visitation, she still had inappropriate housing and tested positive for Diphenhydramine in a March 2023 urine analysis. CPS stated that reunification was no longer a viable option. The report recommended the concurrent plan of durable legal custody for the foster parents, Eunice and Ricky, due to A.B.'s well-being and bond with them. Alisha testified about her living situation, employment, challenges faced in securing stable housing and consistent visits. Alisha wished that the CPS case would remain open so she could be a parent for A.B. The court granted durable legal custody to Eunice and Ricky, closing the CPS case while not terminating Alisha's or Eligah's parental rights. The court noted that they could request custody modification if they became more stable. Alisha appealed.

### **ISSUE**

Whether the Court should reverse or modify the custody order granting durable legal custody of A.B. to her foster parents based on new circumstances.

### **HOLDING**

Because Alisha raised no issues or legal arguments to reverse the youth court's order as she did not challenge the results but asked the Court for a modification based on new circumstances, the Court did not reverse or modify the custody order granting durable legal custody of A.B. to her foster parents based on new circumstances. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Youth Court.

#### **Affirmed - 2023-CP-00639-COA (June 25, 2024)**

Opinion by Judge Greenlee

Hon. Carol Jones Russell (Forrest County Youth Court)

*Pro se* for Appellant - Jack Lucian Denton, Victoria Ann Lowery, & Chelye P. Amis for Appellees

Briefed by [Hayward Gordon](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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## **NEAL V. CAIN**

### **CIVIL - STATE BOARDS & AGENCIES**

**ADMINISTRATIVE LAW - APPEALS - VENUE** - Appeals from the Mississippi Department of Corrections' decisions have proper venue in the county where the prisoner was incarcerated at the time he requested relief through the Administrative Remedy Program

**ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY CONCLUSIONS** - An agency's conclusions must remain undisturbed unless the agency's order (1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the administrative agency, or (4) violates some statutory or constitutional rights of the aggrieved party

### **FACTS**

Jerimaine Neal was a prison inmate in Marshall County in the custody of the Mississippi Department of Corrections ("MDOC"). In 2007, Neal was sentenced to life imprisonment for murder. In April 2022, Neal filed a request through



MDOC's Administrative Remedy Program ("ARP") to update his timesheet to include a parole eligibility date. MDOC reviewed his request and found that Neal was not eligible for parole because he had been convicted of murder. After Neal continued through ARP's process, MDOC once again denied his request for parole in June 2022 because individuals convicted of murder committed "on or after July 1, 1995" were not eligible for parole. As a result, Neal exhausted his administrative remedies. In August 2022, Neal filed a complaint in the Hinds County Circuit Court requesting judicial review of the ARP decisions claiming that the amended statute was ambiguous and should be resolved in his favor. MDOC responded that the court should deny relief or transfer the action to Marshall County Circuit Court where Neal was housed. The Hinds County Circuit Court found that venue was proper in Marshall County Circuit Court and transferred venue to the Marshall County Circuit Court. There, MDOC filed a "Motion for Judgment on the Pleadings, and/or, in the Alternative Motion to Dismiss," reasserting its argument that Neal was not eligible for parole due to being convicted of murder. In February 2023, Neal filed a "Declaration and Notice" arguing that it was improper for the Hinds County Circuit Court to transfer the action because the defendants resided in Hinds County. In April 2023, the Marshall County Circuit Court entered its order finding that MDOC's findings were supported by substantial evidence, were not arbitrary or capricious, were not beyond the power of the agency to make, nor violated some statutory or constitutional right of Neal. The court affirmed MDOC's ARP decision that individuals convicted of murder committed after July 1, 1995 were not eligible for parole. Neal appealed.

### **ISSUES**

Whether (1) the Hinds County Circuit Court erred by transferring venue to the Marshall County Circuit Court; (2) the Marshall County Circuit Court erred by affirming MDOC's ARP decision denying Neal's request for a parole date; and (3) attorneys for MDOC committed fraud on the court and violated the Mississippi Rules of Professional Conduct.

### **HOLDING**

(1) Because appeals from MDOC's decisions had proper venue in the county where the prisoner was incarcerated at the time he requested relief through the ARP and the Court of Appeals reviewed the underlying order of the administrative agency, the Hinds County Circuit Court did not err by transferring venue to the Marshall County Circuit Court. (2) Because MDOC's decision that Neal was not eligible for parole was supported by substantial evidence, because that decision was not arbitrary or capricious, because that decision was authorized by statute and was within MDOC's authority, and because that decision did not violate Neal's statutory or constitutional rights, the Marshall County Circuit Court did not err by affirming MDOC's ARP decision denying Neal's request for a parole date. (3) Because the allegations of fraud and professional misconduct were unsupported by the record and beyond the scope of the appeal, the Court of Appeals declined to address this issue. Therefore, the Court of Appeals affirmed the judgment of the Marshall County Circuit Court.

#### **Affirmed - 2023-CP-00625-COA (June 25, 2024)**

Opinion by Judge Greenlee

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

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

Briefed by [Ramsey Thrasher](#)

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

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## **SMITH V. MITCHELL**

### **CIVIL - DOMESTIC RELATIONS**

**FAMILY LAW - PARENTAL RIGHTS - TERMINATION** - To terminate parental rights of natural parents, a petitioner must establish by clear and convincing evidence (1) that the parent has abandoned or deserted the child or is unfit and (2) that termination is in the best interest of the child

**FAMILY LAW - TERMINATION OF PARENTAL RIGHTS - ABANDONMENT** - Under Miss. Code Ann. § 93-15-103(a), abandonment may be established by showing, for a child who is three years of age or older on the date

that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for at least one year

**FAMILY LAW - TERMINATION OF PARENTAL RIGHTS - DESERTION** - Under Miss. Code Ann. § 93-15-103(d), desertion means that the parent has not demonstrated, within a reasonable period of time after the birth of the child, a full commitment to the responsibilities of parenthood

**FAMILY LAW - PARENTAL RIGHTS - APPEAL** - An appellate court's review of a termination of parental rights is limited, and such decisions will not be reversed where credible proof exists supporting the finding of fact by clear and convincing evidence

### **FACTS**

Jade Flurry and Trevor Smith were the unmarried biological parents of H.S., born in 2015. Smith was arrested when H.S. was one month old and was subsequently in and out of jail for five out of the first seven years of H.S.'s life. Due to his repeated incarcerations, Smith had no interaction with H.S. since the child was three years old, a period of nearly four years. After Flurry married Hunter Mitchell, the two filed a petition in the Pearl River Chancery Court to terminate Smith's parental rights and allow Mitchell to adopt H.S. A guardian ad litem ("GAL") was appointed to the case and recommended that Smith's parental rights be terminated, citing Smith's inability to maintain a parental relationship due to repeated incarcerations and drug addiction. The GAL further testified that Smith had multiple chances over the years to correct his behavior and that he had failed to do so. The chancellor terminated Smith's parental rights, noting that Smith's patterns of drug use and incarceration had prevented a relationship between Smith and H.S. and that Smith's conduct did not demonstrate a commitment to the responsibilities of parenthood. Smith appealed.

### **ISSUE**

Whether the trial court erred in finding that Flurry provided clear and convincing evidence sufficient to support termination of Smith's parental rights to H.S.

### **HOLDING**

Because Flurry provided evidence of Smith's drug addiction, incarceration, and failure to establish and maintain a relationship with H.S., the trial court did not err in finding that Flurry provided clear and convincing evidence sufficient to support terminating Smith's parental rights. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Chancery Court.

**Affirmed - 2023-CA-00259-COA (June 25, 2024)**

Opinion by Judge Emfinger

Hon. Michael Chadwick Smith (Pearl River County Chancery Court)

S. Christopher Farris for Appellant - Jansen T. Owen for Appellees

Briefed by [Thomas Andersen](#)

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

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## **VOGT V. WALKER**

### **CIVIL - OTHER**

**FOREIGN JUDGMENTS - LIMITATIONS PERIOD - NON-RESIDENTS** - The statute of limitations in cases involving foreign judgments is seven years where the person against whom such judgment shall be rendered is a non-resident of the state at the time the action is instituted

**FOREIGN JUDGMENTS - LIMITATIONS PERIOD - RESIDENTS** - The statute of limitations in cases involving foreign judgments is three years where the person against whom such judgment shall be rendered is a resident of the state at the time the action is instituted

**FOREIGN JUDGMENTS - FULL FAITH & CREDIT - EXCEPTIONS** - Foreign judgments are entitled to Mississippi's full faith and credit with two exceptions: false representation and lack of personal jurisdiction over the party against whom the judgment was rendered

### **FACTS**

Allen Eugene Walker became a Mississippi resident in 2006. Around March 12, 2009, John Edward Vogt II and Edward Vogt ("the Vogts") each filed civil actions against Walker in Texas. Process was allegedly served upon Walker in Texas. Walker contended that he did not receive process. On February 9, 2012, the Texas court entered two no-answer default judgments against Walker. In April 2019, Walker filed a complaint in Pearl River County Chancery Court against the appointed receiver and the Vogts seeking declaratory relief from the judgments made in Texas and equitable relief to restrain and enjoin the Vogts and the receiver from collecting the default judgments. In September 2019, Walker filed a motion for summary judgment. This was followed by a motion to dismiss and for summary judgment by the Vogts in May 2020. The Vogts then filed a notice of filing of foreign judgment on February 18, 2021. All the parties' summary judgment motions and motions to dismiss were denied. The action was then transferred to Pearl River County Circuit Court. In November 2022, Walker filed a motion re-urging his motion for summary judgment from the chancery court. The trial court granted Walker's motion for summary judgment due to the Texas court's lack of jurisdiction due to insufficient service of process. The court also denied the Vogts' registration of a foreign judgment due to untimeliness. The Vogts appealed.

### **ISSUE**

Whether the trial court erred by granting summary judgment in Walker's favor.

### **HOLDING**

Because the Vogts failed to adhere to the Mississippi statute of limitations governing the enrollment of foreign judgments, the trial court did not err by granting summary judgment in Walker's favor. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

**Affirmed - 2022-CA-01303-COA (June 25, 2024)**

Opinion by Judge Lawrence

Hon. Prentiss Greene Harrell (Pearl River County Circuit Court)

John Andrew Hammond for Appellants - Nathan S. Farmer for Appellee

Briefed by [Joshua Arias](#)

Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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## ***COURT OF APPEALS - CRIMINAL CASES***

### **BARNES V. STATE**

#### **CRIMINAL - FELONY**

**JURY INSTRUCTION - LESSER-INCLUDED OFFENSE - EVIDENTIARY BASIS** - A party is entitled to a lesser-included-offense instruction only if there is an evidentiary basis in the record to support it; a lesser-included-offense instruction should be granted unless the trial court, and ultimately the appellate court, can say that taking the evidence in the light most favorable to the accused, and considering all reasonable inferences which may be drawn in favor of the accused from the evidence, no reasonable jury could find the defendant guilty of the lesser included offense and conversely not guilty of at least one essential element of the principal offense

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF** - To prove ineffective assistance of counsel, a defendant must prove that (1) counsel's performance was deficient, and (2)



the deficient performance prejudiced the defense; allegations of ineffective assistance of counsel must be made with specificity and detail and are assessed by the totality of the circumstances

## **FACTS**

Laurie Barnes was convicted of non-residential burglary. At trial, Barnes testified that she and her co-indictee, Roberta Jones, were on Castiel Moffett's property and inside Moffett's unoccupied home because they thought it was a home for rent in the area. Investigator Robert Morris testified that in an interview, Barnes told Morris that she and Jones were looking for places for Jones to rent. Barnes told Morris that when they came upon Moffett's unoccupied home, the door was open. Morris also testified that Barnes stated that she and Jones left the property after its security alarm went off but returned shortly after to collect and box items from the home in order to buy them from the home's owner. Additionally, Morris testified that Jones confirmed they had gathered items and placed them near the exit door. Barnes's counsel did not object to Morris's testimony about statements made by Jones in the interview, and Barnes's counsel cross-examined Morris on those statements. Barnes requested the jury be instructed that if the State failed to prove any essential elements of burglary of an unoccupied dwelling, then the jury may decide whether the State has proven all elements of the lesser crime of trespassing beyond a reasonable doubt. The State objected, arguing that the evidence did not support that instruction. The circuit court agreed and denied the instruction. Barnes appealed.

## **ISSUES**

Whether the circuit court erred by (1) refusing to give Barnes's proposed jury instruction on the lesser-included offense of trespass and (2) allowing hearsay testimony of a co-indictee despite no objection from Barnes's counsel.

## **HOLDING**

(1) Because Barnes could not point to an evidentiary basis for the lesser-included trespass instruction, the circuit court did not err in refusing to give it. (2) Because Morris's testimony about Jones's statement offered no new information and was substantially similar to Barnes's testimony, because Barnes's counsel elicited more testimony on the statement from cross-examination of Morris, and because the failure of Barnes's counsel to object at trial did not prejudice her case, the circuit court did not err in admitting the testimony, and Barnes's ineffective assistance of counsel claim lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Jasper County Circuit Court.

**Affirmed - 2023-KA-00145-COA (June 25, 2024)**

Opinion by Judge Greenlee

Hon. Stanley Alex Sorey (Jasper County Circuit Court, Second Judicial Dist.)

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

Briefed by [Isabella Escobedo](#)

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

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## **DOSS V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - RIGHT TO COUNSEL - SECOND ATTORNEY** - Under Miss. R. Civ. P. 7.2(a)(2), in non-death penalty cases, the appointment of multiple attorneys is within the discretion of the court

**EVIDENCE - PRETRIAL STATEMENTS - VOLUNTARINESS** - In order for a confession to be admissible, the trial court must find beyond a reasonable doubt that a confession was knowingly, intelligently, and voluntarily given and that before a defendant's custodial interrogation, he was administered his *Miranda* rights

**EVIDENCE - PROBATIVE VALUE - PHOTOGRAPH ADMISSIBILITY** - Even if a photograph is gruesome, grisly, unpleasant, or even inflammatory, it may still be admitted so long as it has probative value and its introduction serves a meaningful evidentiary purpose

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL** - A defendant is permitted to raise the issue of ineffective assistance of counsel on direct appeal, but the Court’s review is strictly limited to the appellate record

**CRIMINAL PROCEDURE - REVERSIBLE ERROR - CUMULATIVE ERROR DOCTRINE** - Under the cumulative-error doctrine, individual errors, which are not reversible in themselves, may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial

### **FACTS**

Alexis Tallant and her stepfather, Robert Cox, went to a designated meeting place to buy a car listed on Facebook marketplace for \$5,800. According to Tallant’s testimony, when she and Cox arrived, three men appeared, one had a pistol, and another had a baseball bat. The gunman aimed his weapon at Cox and demanded the money. When Cox pushed the gunman’s weapon away, another man hit Cox with the baseball bat. Tallant pulled out her own concealed gun and attempted to shoot the men. Tallant then ran away, lost track of Cox, and called the police. Cox was shot in the chest and died from his injuries. Authorities arrested Jarquavious Doss, Jeremiah Fears, and Lamarius Spraggins in connection with the crime. After arrest, Doss waived his *Miranda* rights and did not appear to be under the influence of any substances that impaired his understanding. Doss denied having knowledge of the robbery in a recorded interview. Doss returned and spoke to the police in a second recorded interview, where Doss reiterated that Tallant shot first, and he spoke of the crime as being witnessed firsthand. Doss filed a motion to suppress those recorded pretrial statements, but the circuit court denied the motion for failure to establish that his statements were involuntarily given. Prior to the trial, Doss filed a motion for the circuit court to appoint a second attorney, claiming he was indigent. The circuit court denied the motion as an untimely attempt to delay and improper. Doss testified that he only revealed information about the robbery he learned from Spraggins and Bowens when investigators mentioned the death penalty in connection with the crimes. The State introduced an autopsy photo of an internal view of Cox’s spinal cord to help the jury understand the associated expert testimony. The trial court convicted Doss for capital murder, armed robbery, conspiracy to commit armed robbery, and aggravated assault. Doss appealed.

### **ISSUES**

Whether (1) the circuit court erred by denying Doss’s motion to appoint a second trial attorney; (2) the circuit court erred by admitting into evidence Doss’s pretrial statements; (3) the circuit court erred by admitting into evidence a photo of the victim from the autopsy; (4) Doss’s trial attorney rendered ineffective assistance of counsel; and (5) cumulative error required a reversal of Doss’s convictions.

### **HOLDING**

(1) Because Doss offered no proof of his indigency and failed to show that he was entitled to a second attorney, the circuit court did not err in denying Doss’s motion to appoint a second trial attorney. (2) Because the investigator’s reference to the death penalty failed to rise to the level of coercion necessary to render Doss’s statement involuntary, the circuit court did not err in determining that Doss’s pretrial statements were knowingly, intelligently, and voluntarily made. (3) Because the photo supported the expert’s testimony and assisted his explanation of the bullet’s trajectory through the victim’s body, the extent of the internal injuries, and the cause of death, the circuit court did not abuse its discretion by admitting the photo into evidence. (4) Because the appellate record alone was insufficient to evaluate all of Doss’s ineffective assistance of counsel claims, the Court of Appeals denied Doss’s claims without prejudice so that Doss may raise them in a motion for post-conviction collateral relief. (5) Because no individual errors in Doss’s case required reversal, Doss’s cumulative-error argument lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Chickasaw County Circuit Court.

**Affirmed - 2022-KA-01185-COA (June 25, 2024)**

Opinion by Judge Smith

Hon. Kent E. Smith (Chickasaw County Circuit Court, First Judicial Dist.)

Graham Patrick Carner for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Youssef Kishk](#)

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

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## JACKSON V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - LEGAL COMPETENCE - MENTAL COMPETENCY EXAMINATION** - A person accused of a crime may only be tried if he is legally competent which means he can perceive and understand the nature of the proceedings, communicate rationally with his attorney about the case, recall relevant facts, and testify in his own defense, if appropriate

**CRIMINAL PROCEDURE - LEGAL COMPETENCE - PRESUMPTION & BURDEN** - There is a presumption of mental competency, and the burden of proof rests on the defendant to prove that he is mentally incompetent to stand trial

**CRIMINAL PROCEDURE - SUA SPONTE ORDER - MENTAL EXAMINATION** - When reviewing whether a trial judge should have sua sponte ordered a mental examination, the pertinent question is whether a trial judge received information that, objectively considered, should reasonably have raised a doubt about the defendant's competence and alerted the judge to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense

**CRIMINAL PROCEDURE - SUA SPONTE ORDERED MENTAL EXAMINATION - EVIDENCE** - Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient

### FACTS

In April 2022, Officer Christie Shoemaker responded to a call about a man carrying a gun in Flora and found Kenneth Jackson with a firearm slung over his shoulder. Shoemaker recognized Jackson as a felon through her previous interactions with him in her capacity as a law enforcement officer. Shoemaker took the firearm, and other officers arrived to arrest Jackson. Investigator Matthew Holcomb interviewed Jackson, and Jackson waived his *Miranda* rights and admitted possession of the firearm. The State indicted Jackson for possession of a firearm by a felon under Miss. Code Ann. § 97-37-5. At trial, Jackson attempted to introduce various YouTube videos as evidence, claiming they contained his medical history and were related to counterintelligence operations, but the court deemed them irrelevant. Jackson testified in his own defense, recounting the events of his arrest and mentioning various conspiracy theories. The jury found Jackson guilty and sentenced him to ten years in custody of the Mississippi Department of Corrections. The trial court denied Jackson's post-trial motions. Jackson appealed.

### ISSUE

Whether the trial court erred by failing to sua sponte order a mental competency evaluation.

### HOLDING

Because neither Jackson nor his attorney raised Jackson's competency before the trial court, and because the trial court had the benefit of speaking with Jackson and directly observing him in person, the trial court did not abuse its discretion by failing to sua sponte order a mental evaluation to assess Jackson's competency. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

### DISSENT

Judge McCarty argued that the trial court abused its discretion by failing to order a mental competency evaluation for Jackson despite numerous signs of potential mental incompetence, including his insistence on introducing irrelevant YouTube videos as evidence, claims about counterintelligence operations, and "rambling, delusional, and incoherent statements" during trial. Judge McCarty emphasized that even without a request from Jackson or his attorney, the court had a duty to order an evaluation when presented with reasonable grounds to doubt the defendant's competence.

**Affirmed - 2023-KA-00201-COA (June 25, 2024)**

En Banc Opinion by Presiding Judge Carlton - Dissent by Judge McCarty  
Hon. Dewey Key Arthur (Madison County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee  
Briefed by [Margaret Gardner](#)  
Edited by [Robert “Duncan” Jones](#) & [William Davis](#)

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## JOHNSON V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE** - For a defendant to be entitled to a lesser-included offense instruction, he must point to evidence in the record from which a jury could reasonably find him not guilty of the crime with which he was charged, and at the same time find him guilty of a lesser-included offense

**CRIMINAL PROCEDURE - MANSLAUGHTER - HEAT OF PASSION** - Mere words, no matter how provocative, are insufficient to reduce an intentional and unjustifiable homicide from murder to manslaughter

**CRIMINAL PROCEDURE - APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL** - The Court of Appeals will address ineffective assistance of counsel claims directly on appeal when (1) the record affirmatively shows ineffectiveness of constitutional dimensions or (2) the parties stipulate that the record is adequate to consider the claims without further findings of fact

### FACTS

Christopher Johnson Jr. had previously been in a relationship with Nikerria Moore. Moore lived in an apartment with her mother, and her sister lived upstairs with her fiancé, Jarquis Ragland. One day Johnson went looking for Moore and went straight into her apartment, but Moore’s mother told Johnson that she was not home. Immediately after leaving, Johnson went upstairs to Ragland’s apartment. Johnson knocked on the door and after several knocks, someone answered the door. During this, Moore was hiding in a closet inside the apartment. Johnson was escorted by Ragland out of the apartment after making some threatening comments. One person testified that as Ragland was escorting Johnson out, she heard Johnson say he was going to shoot Ragland in the face. After the door was closed, Johnson fired a gun into the apartment and the bullet went through the door and struck Ragland in the chest. Moore’s mother testified that after Johnson left, she heard a gunshot come from upstairs about ten minutes later. Police were called, and Ragland was declared deceased at the scene. Johnson was indicted and charged with first-degree murder with an enhancement for using a firearm during the commission of a felony and one count of shooting into a dwelling. Johnson pled not guilty and asserted self-defense. At trial, Johnson testified that he allegedly saw a gun and felt threatened for his life and safety, so he fired his gun. Johnson was convicted on both charges. Johnson appealed.

### ISSUES

Whether (1) the trial court erred by refusing Johnson’s proposed jury instruction for heat-of-passion manslaughter and (2) Johnson received ineffective assistance of counsel at trial.

### HOLDING

(1) Because Johnson killed Ragland with a gun, which is a deadly weapon, and because Johnson alleged that his act of firing the gun at the apartment door was provoked by fear for his life and safety, the trial court properly denied Johnson’s request for a heat-of-passion jury instruction. (2) Because the State did not stipulate that the record was adequate to consider this claim, and because Johnson’s claim was based on facts not fully apparent from the record, the Court declined to address his ineffective-assistance-of-counsel claim. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

**Affirmed - 2023-KA-00350-COA (June 25, 2024)**

Opinion by Judge Smith

Hon. Charles E. Webster (Coahoma County Circuit Court)

George T. Holmes (Pub. Def. Office) & *Pro se* for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Allie Kellett](#)  
Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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