

**MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 16, 2025*****SUPREME COURT - CIVIL CASES*****J.J.B. V. MONROE CNTY. DEP'T OF CHILD PROT. SERVS.****CIVIL - CUSTODY**

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

**FAMILY LAW - PARENTAL RIGHTS - TERMINATION FACTORS** - Only one of the enumerated grounds in Miss. Code Ann. §§ 93-15-119 or 93-15-121 needs to be satisfied in order to justify terminating a natural parent's rights; a few of the enumerated grounds for termination include abandonment or deserting of the child, unwillingness to provide reasonably necessary food, clothing, shelter, or medical care for the child, failure to exercise reasonable visitation or communication with the child, and an erosion of the relationship between the parent and the child caused by the parent's abusive conduct

**FACTS**

In December 2019, Jane's three daughters, aged five, three, and twenty-two months, were removed from her custody due to unsafe living conditions in a one-bedroom apartment shared with her mother, sister, and her sister's three children. Jane, reportedly homeless and using drugs, had been evicted from another apartment. Neighbors reported the children were unsupervised, and the Mississippi Department of Child Protection Services ("CPS") found the apartment dirty and unsafe, deeming it an emergency. After the youth court adjudicated the children as neglected, CPS developed a service plan requiring Jane to obtain stable housing, employment, and transportation, as well as undergo drug screening and parenting classes. While Jane completed parenting classes and overcame drug use, she failed to maintain stable housing, employment, or transportation. Visits with her daughters were irregular and chaotic. Due to her noncompliance, CPS changed the permanency plan to adoption and petitioned for the termination of her parental rights. At the January 2023 hearing, CPS workers testified about Jane's failure to comply with the service plan. They agreed on the order, including her inability to provide for her daughter's basic needs or maintain a suitable home. Jane admitted challenges in finding employment and housing, downplayed a domestic violence incident involving her boyfriend, and sought more time to address her situation. The court-appointed Guardian Ad Litem ("GAL") recommended termination, citing Jane's lack of stability and the drastic effects of her abusive relationship. The chancery court found clear and convincing evidence to terminate Jane's parental rights under Miss. Code Ann. § 93-15-115, citing abandonment, unfitness, failure to provide for the children's needs, and erosion of the parent-child relationship. The court determined termination was in the best interest of the children to facilitate their adoption and provide them with a permanent, stable home. Jane appealed.

**ISSUE**

Whether the chancery court's decision to terminate Jane's parental right was erroneous.

**HOLDING**

Because Jane abandoned or deserted her daughters and was deemed unfit to raise them, was unwilling to provide necessary food, clothing, shelter, or medical care for her daughters, failed to exercise reasonable visitation or communication with her daughters, and caused deep-seated antipathy which severed the parent-child relationship, the chancery court did not err by terminating Jane's parental rights. Therefore, the Supreme Court affirmed the judgment of the Monroe County Chancery Court.

**Affirmed - 2023-CA-00532-SCT (Jan. 16, 2025)**

En Banc Opinion by Justice Maxwell

Hon. Jacqueline Estes Mask (Monroe County Chancery Court)

Jennifer Louise Morgan (Pub. Def. Office) for Appellant - Kristi Duncan Kennedy & Lindsey Etheridge Lazinsky (Att’y Gen. Office) for Appellee

Briefed by [Senneca Evans](#)

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

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## MISS. COMM’N ON JUD. PERFORMANCE V. MOORE

### CIVIL - JUDICIAL PERFORMANCE

**CONSTITUTIONAL LAW - FIRST AMENDMENT - RESTRICTING SPEECH** - Where the government seeks to restrain political or public issue speech, it must withstand strict scrutiny, which requires the government to demonstrate that the restraint is narrowly tailored to serve a compelling state interest

**CONSTITUTIONAL LAW - FIRST AMENDMENT - VIOLATIONS FOR PUBLIC EMPLOYEES** - When evaluating claims of First Amendment violations for public employees, the Supreme Court first determines if the speech addresses a “matter of legitimate public concern,” and if the Court finds that the speech does address a matter of legitimate public concern, the Court then balances the employee’s first amendment rights against the governmental employer’s countervailing interest in promoting the efficient performance of its normal functions

**JUDICIAL PERFORMANCE - MEMORANDUM OF UNDERSTANDING - COMPLIANCE** - Pursuant to Rule 6B(3) of the Rules of the Miss. Commission on Judicial Performance, the Commission may enter into a Memorandum of Understanding with the respondent, which is an enforceable disposition of the case, and violating its terms or conditions can result in the cause being considered by the Commission as an aggravating factor in related future proceedings

**JUDICIAL MISCONDUCT - SANCTIONS - PROPORTIONALITY** - In cases of judicial misconduct, the Supreme Court uses the following factors to weigh the appropriateness of the sanctions: (1) the length and character of the judge’s public service; (2) whether there is any prior caselaw on point; (3) the magnitude of the offense and the harm suffered; (4) whether the misconduct is an isolated incident or evidences a pattern of conduct; (5) whether moral turpitude was involved; and (6) the presence or absence of mitigating or aggravating factors

### **FACTS**

In December 2019, after receiving a complaint stating that Judge Carlos Moore was posting information about his cases on various social media outlets, the Miss. Commission on Judicial Performance (“The Commission”) issued a letter to Judge Moore, reminding him about the judicial conduct canons prohibition on public comments about pending or impending cases in any court by judges. Despite the warning, Judge Moore continued to maintain a Facebook page under the name “Judge Carlos Moore” and a Twitter (now known as X) account with the handle “Esquiremoore.” Both accounts contained material that could be perceived as advertising his law practice and comments on current political issues. As a result of his continued improper use of social media outlets after receiving the 2019 letter, the Commission issued a Memorandum of Understanding (“MOU”) by which Judge Moore agreed, among other things, to no longer use the display name “Judge Carlos Moore” for his Twitter account; to ensure that his social media posts did not use his office to advance the interests of his private law practice and other non-judicial activities; to remove all posts from his government official Facebook page that were not related strictly to court business; and to not post any pictures, videos, or commercials for his law firm or any other personal interests. It was stipulated that violations of the terms and conditions of the MOU could result in the Commission considering the case as an aggravated factor in any related future proceeding. Judge Moore did not comply with the MOU and continued to post under the same name and profile picture of him seated at the bench in his robe. The current case addressed several instances of noncompliance with the MOU that included a November 2021 social media post commenting on the acquittal of Kyle Rittenhouse and comments made by Judge Moore during a guest appearance on The Kelly Clarkson Show in relation to his “DO Better ASAP” alternative sentencing program. In both instances, Judge Moore’s statements contained racially charged comments that

the Commission described as “racially divisive.” In July 2022, the Commission filed a formal complaint, alleging that Judge Moore violated Miss. Const. art. VI, § 177A and Miss. Code Jud. Conduct Canons 1, 2A, 3B(5), 3B(9), and 4A by his actions on social media and television, as well as the MOU regarding his social media accounts. Judge Moore did not respond to the Commission’s requests and filed a written submission arguing that the First Amendment protected his speech. He requested that the Commission dismiss the formal complaint or recommend lesser sanctions. In its final response, the Commission alleged that Judge Moore violated the MOU, his speech was “racially divisive,” and his actions did not “promote public confidence in the integrity and impartiality of the judiciary.” The Commission recommended that Moore be publicly reprimanded, removed from office, suspended for six years, and fined \$5,000, plus costs. The Commission moved for the Supreme Court to accept its recommendation.

### **ISSUES**

Whether Judge Moore’s conduct (1) violated Miss. Const. art. VI, § 177A, and Miss. Code Jud. Conduct Canons 1, 2A, 3B(5) and 4A; and (2) warranted the recommended sanctions of public reprimand, removal from office, suspension for six years, and a \$5,000 fine, plus costs.

### **HOLDING**

(1) Because Judge Moore’s speech in both the social media posts and televised comments were not a matter of public concern and were made while acting in his judicial capacity, they were not protected by the First Amendment, and because his behavior amounted to willful misconduct that was prejudicial to the administration of justice, brought the judicial office into disrepute by not complying with the Code of Judicial Conduct, diminished the public’s confidence in the integrity and impartiality of the judiciary by publicly making racially charged comments that showed bias or prejudice, and violated the terms of an enforceable MOU, the Supreme Court found Judge Moore in violation of Miss. Const. art. VI, § 177A, as well as Miss. Code Jud. Conduct Canons 1, 2A, 3B(5) and 4A; (2) Because Judge Moore’s tenure as a judge was relatively short and tumultuous, significant caselaw on point was identified, his comments that questioned the integrity of the judicial system received widespread publicity in the media, his misconduct was not an isolated incident, he exhibited moral turpitude by failing to uphold the dignity and respect of the judiciary, and any mitigation was found to be greatly outweighed by Judge Moore’s actions and prior transgressions, permanent removal from the bench and a fine were the appropriate sanctions for Judge Moore’s actions. Therefore, the Supreme issued a \$3,000 fine and removed Judge Moore from the bench.

### **DISSENT**

Presiding Justice King argued that Judge Moore’s comments on television and social media were discussions of broad public importance and were therefore protected by the First Amendment. He also argued that because the Supreme Court alone decides what judicial conduct is sanctionable, the Court was not bound by the Commission’s MOU.

#### **Removal from the Bench; Fine of \$3000 - 2024-JP-00121-SCT (Jan. 16, 2025)**

En Banc Opinion by Justice Chamberlin - Dissent by Presiding Justice King

Hon. David Ryan Bruhl (Miss. Comm’n on Jud. Performance)

Ashley May & Rachel L. Wilson for Petitioner - Terris C. Harris & Jeffrey M. Graves for Respondent

Briefed by [Mira Radu](#)

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

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 14, 2025**

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

**GARFIELD V. TATE**

**CIVIL - WILLS, TRUSTS, & ESTATES**

**WILLS & ESTATES - WRONGFUL DEATH BENEFICIARY - DETERMINING HEIRS** - Under Miss. Code Ann. § 11-7-13, the natural father of an illegitimate child may not recover for the wrongful death of the child unless he has or establishes the right to inherit from the child under § 91-1-15

**WILLS & ESTATES - BENEFICIARIES - ILLEGITIMATE CHILDREN** - Under Miss. Code Ann. § 91-1-15(3)(d), the natural father of an illegitimate child shall not inherit from or through the child unless the father has openly treated the child as his and has not refused or neglected to support the child

**WILLS & ESTATES - BENEFICIARIES - ILLEGITIMATE CHILDREN** - Openly treating a child as one's own requires consistent and substantial involvement in the child's life; occasional or minimal involvement, such as sporadic visits or outings, is insufficient to meet this standard

**WILLS & ESTATES - BENEFICIARIES - ILLEGITIMATE CHILDREN** - A father who does not contribute to his child's financial needs fails to meet the statutory standard for inheritance rights, regardless of biological paternity

## **FACTS**

Kenyatta Garfield and Deshundra Tate were in a relationship but never married. In 2017, Deshundra gave birth to their daughter, Kendra. Garfield did not sign the birth certificate. Garfield's paternity was unestablished until the Mississippi Department of Human Services filed a complaint to determine paternity, and Garfield sought a DNA test. The DNA test results confirmed Kenyatta was Kendra's father. In 2022, Deshundra and Kendra passed away due to a gas leak at their apartment. Garfield filed a wrongful death lawsuit against the apartment complex and became the administrator of Deshundra's estate. Deshundra's mother, Brenda Tate, moved to set aside the order naming Garfield the administrator, and her motion was granted. Brenda also filed a petition to determine heirship and sought for Garfield to be disinherited from Kendra. Deshundra's aunts testified that Garfield did not attend Deshundra's prenatal doctor appointments, did not arrive at the hospital until two days after Kendra's birth, did not initially believe that Kendra was his child, did not come to the hospital when Kendra suffered medical emergencies, would only visit her for an hour or two, only spent one or two nights in the apartment with her, and arrived over thirty minutes late to her funeral. Garfield testified that he was working during her birth but arrived at the hospital the next day. Garfield further testified that he did not sign Kendra's birth certificate because "he did not feel like he had to," and he "had a little doubt" that Kendra was his daughter. Garfield testified that he spent about four days out of the week with Kendra and every other holiday, would pick Kendra up from school, and took her on a trip to Arkansas. Garfield's family members also testified that Garfield spent most of his time with Kendra. Deshundra's aunts and Kendra's teacher aide testified that Garfield never picked Kendra up from school and did not attend school functions. Further, Garfield was ordered to pay \$100 each month in child support, but he only made four payments over the five years that paternity was established and did not contribute financially prior to establishing paternity. The chancery court found that Garfield did not pay for any of Kendra's prenatal or postnatal supplies, medical bills, or funeral expenses. As a result, the chancery court found that Garfield did not hold Kendra out to the public as his child and refused to support Kendra, so he should be disinherited from his daughter. Garfield appealed.

## **ISSUE**

Whether Garfield was entitled to inherit from Kendra under the wrongful death statute.

## **HOLDING**

Because Garfield did not attend Kendra's birth, did not sign her birth certificate, did not provide support in any way before paternity was established, and did not provide adequate child support after paternity was established, he did not openly treat Kendra as his child and was not entitled to inherit from her. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Chancery Court.

**Affirmed - 2023-CA-01262-COA (Jan. 14, 2025)**

Opinion by Judge Lawrence

Hon. Catherine Farris-Carter (Bolivar County Chancery Court, Second Judicial Dist.)

Philip Carey Hearn & Charles Cassidy Cole for Appellant - Carlos Eugene Moore for Appellee

Briefed by [Anna Stack](#)

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

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## HOLSTEIN V. NICHOLAS

### CIVIL - CONTRACT

**CONTRACTS - INDEMNITY RECOVERY - VOLUNTARY PAYMENT** - A payment is considered voluntary if it was made without compulsion or fraud by someone who had no interest to protect, no legal or moral obligation to pay, and full knowledge of all the facts which would render the payment voluntary

**CONTRACTS - INDEMNITY RECOVERY - COMPULSORY REQUIREMENT** - To recover indemnification costs, the plaintiff must allege and prove that he was legally liable to the person injured and thus paid under compulsion

**CIVIL PROCEDURE - WRIT OF GARNISHMENT - JUDGMENT** - Pursuant to Miss. Code Ann. §11-35-31, if a garnishee who is personally summonsed fails to answer the writ of garnishment as required by law, and the garnishee fails to show cause for vacating it, the court shall enter a judgment against him for the amount of plaintiff's demand

**CONTRACTS - INDEMNITY RECOVERY - STANDARD OF VOLUNTARINESS** - To determine whether payments are voluntary, courts look at the facts of each particular case

### FACTS

D. Brooks Holstein obtained a judgment against Mark Nicholas. Holstein enrolled the Ohio judgment in Mississippi in the Madison County Circuit Court. After registering the judgment, Holstein began collection methods, including serving writs of garnishment on numerous banks and on Nicholas's attorney. Nicholas's attorney sent Holstein's attorney a check for \$260,000 drawn on the firm's trust account. Alongside the payment, Nicholas's attorney attached a letter that stated the settlement funds were being disbursed pursuant to ongoing settlement negotiations. There was no further documentation regarding the terms of any actual settlement between the parties. Moreover, there was no proof of service on Nicholas's attorney. His attorney did not file an answer, nor was there an order entered to compel his attorney to make a payment pursuant to the garnishment. The Ohio Court of Appeals reversed and vacated the Ohio judgment and remanded for lack of personal jurisdiction over Nicholas, rendering the Ohio judgment void and unenforceable. Nicholas filed a motion for relief from the Mississippi charging order, seeking to recover the \$260,000 sent to Holstein's attorney, and the trial court ordered the money be immediately returned to Nicholas. Holstein never repaid the money to Nicholas. Nicholas filed a motion to compel the turnover of funds, and the motion was granted. Holstein filed a motion for reconsideration, arguing that the payment was voluntary because Nicholas's attorney did not file a response to the writ of garnishment. The motion was denied. Holstein appealed.

### ISSUE

Whether the trial court erred in ordering the settlement payment to be returned because it was voluntarily made pursuant to the volunteer payment doctrine.

### HOLDING

Because the record lacked any further evidence beyond the letter from Nicholas's attorney as to whether the writ of garnishment was actually served on Nicholas's attorney or whether the payment to Holstein was made in compliance with legal collection efforts, there was not enough evidence to determine whether the payment was voluntary or compulsory. Therefore, the Court of Appeals reversed and remanded the consolidated judgments of the Madison County Circuit Court.

#### **Reversed & Remanded - 2023-CA-00548-COA (Jan. 14, 2025)**

Opinion by Judge Lawrence

Hon. M. Bradley Mills (Madison County Circuit Court)

Robert Thomas Schwartz, Carlee Victoria Dymond, & Christian Jane't Strickland for Appellant - Ronald Keith Foreman & Edward E. Lawler Jr. for Appellee

#### **Consolidated with:**

#### **Reversed & Remanded - 2023-CA-00972-COA (Jan. 14, 2025)**

Hon. M. Bradley Mills (Madison County Circuit Court)

Robert Thomas Schwartz, Carlee Victoria Dymond, & Christian Jane't Strickland for Appellant - Ronald Keith Foreman & Edward E. Lawler Jr. for Appellee  
Briefed by [Madeline McMaster](#)  
Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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## POWELL V. POWELL

### CIVIL - DOMESTIC RELATIONS

**DOMESTIC RELATIONS - DIVORCE - CONTRACT** - A property settlement agreement that is incorporated into a divorce decree must be interpreted by courts as any other contract; if the contract is unambiguous, the intention of the contracting parties should be gleaned solely from the wording of the contract

**DOMESTIC RELATIONS - DIVORCE - CONTEMPT** - A finding of civil contempt is affirmed unless manifest error is present

**CIVIL PROCEDURE - STANDARD OF REVIEW - EVIDENTIARY ERRORS** - A chancery court's evidentiary rulings are not disturbed unless a clear abuse of discretion is present

### FACTS

April Eppstein ("April") and Shannon Powell ("Shannon") divorced and were granted joint custody of their three children. As part of the judgment, both parents were required to maintain health insurance for the children, with any medical or dental expenses not covered by health insurance being split between the parents. The judgment further specified that a receipt be provided to the other parent for any medical services to one of the children within 10 days of being received. Reimbursement for the other parent's half of such expenses was then to be paid within 10 days. Finally, all public-school expenses were also to be split equally between the parents. Shannon filed a petition for contempt against April, alleging that she did not maintain health insurance for the children and had not paid her half of the medical and educational expenses. As part of this case, April attempted to admit a "summary" exhibit of payments made to Shannon for the expenses at issue. The chancellor denied this evidence because the underlying checks had not been entered as evidence. The trial court found April in contempt and ordered payment on a multitude of unpaid expenses as well as Shannon's attorney's fees. April appealed.

### ISSUES

Whether (1) the final judgment of divorce was violated; (2) the chancery court's finding of contempt was manifest error; and (3) the evidentiary rulings were within the chancery court's discretion.

### HOLDING

(1) Because the plain language of the final judgment of divorce required the parents to timely communicate that there was a medical bill, because April did not point to any specific instance where she was not informed of a medical bill or where a text message or email failed to communicate to her a pending medical bill, and because April's brief did not point a single dollar value of error or how the chancery court misinterpreted the final judgment of divorce as to a particular medical bill that led to reach the wrong conclusion, the final judgment of divorce was not violated. (2) Because Shannon made a showing that April failed to pay support, and because April did not show an inability to pay or another defense, the chancery court's finding of contempt was not manifest error. (3) Because April sought and received numerous continuances, and because the case was relatively straightforward, the evidentiary rulings were within the chancery court's discretion. Therefore, the Court of Appeals affirmed the judgment of the Smith County Circuit Court.

**Affirmed - 2022-CA-001258-COA (Jan. 14, 2025)**

En Banc Opinion by Judge McCarty

Hon. David Shoemaker (Smith County Chancery Court)

Christopher Brice Wiggins for Appellant - Corey Daniel Gibson for Appellee

Briefed by [Kennedy Guest](#)

## YARBROUGH V. SACRED HEART CATH. SCH.

### CIVIL - OTHER

**CIVIL PROCEDURE - INJUNCTIVE RELIEF - SUBSTANTIAL LEGAL RIGHT-** To prove a substantial legal right to protect from foreseeable harm for injunctive relief, a plaintiff must prove that (1) it has a substantive legal right to protect its students and employees from foreseeable harm; (2) the defendant’s conduct has infringed upon and violated that right; and (3) injunctive relief is an appropriate remedy

**CIVIL PROCEDURE - PRELIMINARY INJUNCTION - ELEMENTS** - Under Miss. R. Civ. P. 65, to obtain a preliminary injunction, a plaintiff is required to demonstrate by a preponderance of the evidence that (1) there exists a substantial likelihood that it will prevail on the merits; (2) the injunction is necessary to prevent irreparable harm; (3) the threatened injury outweighs the harm an injunction might do to the opposite party; and (4) granting a preliminary injunction is consistent with the public interest

**CIVIL PROCEDURE - INJUNCTIVE RELIEF - PERMANENT INJUNCTION** - A permanent injunction is a remedy potentially available only after a plaintiff can make a showing that some independent legal right is not being infringed; in order to receive a permanent injunction, the plaintiff must prove actual success on the merits and an imminent threat of irreparable harm for which there is no adequate remedy at law

### FACTS

In June 2023, Sacred Heart Catholic School (“Sacred Heart”) filed a sworn petition for a temporary and permanent restraining order, combined with an emergency petition for ex parte relief, against Lowry Yarbrough after Karyn Charles, the principal of Sacred Heart, received a threatening note and flowers from a local florist. The petition alleged that Yarbrough was the person who sent the flowers based on an affidavit of the florist, Ashley Kent. Kent received the order and identified Yarbrough as the person who ordered the flowers and wrote the note that accompanied them. Additionally, the affidavit also contained copies of the address card, addressed to Charles at the school’s address, and the hand-written note that accompanied the flowers, which read, “Matthew 18 may gods [sic] wrath be just [and] swift for the pain you have caused to that family. SEC. 97-37-17.” The court noted that “SEC 97-37-17” was a reference to Miss. Code Ann. § 97-37-17, which prohibits the possession or carrying of weapons on educational property under certain conditions. Sacred Heart’s petition alleged that Yarbrough had caused Sacred Heart to be in fear of harm to person and property, and, if the petition was not granted, there existed a threat of irreparable harm. The trial court signed an order for ex parte relief that prevented Yarbrough from coming within three hundred feet of Sacred Heart, its employees, including Charles, and Sacred Heart’s employees’ homes, places of work, and/or schools, which included certain Sacred Heart properties specified in the temporary restraining order. Additionally, the trial court set a hearing for June of 2023. At the hearing, Yarbrough’s counsel moved the court to dismiss the petition and vacate the temporary restraining order, arguing that the court could not grant an injunction if the petitioner did not also allege an underlying claim, stating that Sacred Heart had failed to do so. Sacred Heart’s counsel emphasized that this case related to a threat made to a principal of a school, and the school must have the ability to protect its children and ensure that someone does not come and carry through with a threat. The trial court denied Yarbrough’s motion to dismiss and vacate the temporary restraining order before instructing both parties to proceed with the hearing. Charles was the first witness who testified, stating that Sacred Heart had previously employed Yarbrough as the physical plant director and overseer of the sports field maintenance before his contract ended in February 2023. Charles also testified about receiving the flowers and how she was terrified and fearful for herself and her family, students, and employees. According to Charles, there were also previous incidents between Sacred Heart faculty and Yarbrough, such as, when Yarbrough was being dismissed, he told Charles and another school administrator that it was about to get ugly. Yarbrough was also escorted out of the school by police because he stated that he planned to come back to get his paperwork, but Charles said no one had paperwork for him. He was told that he had no reason to be there unless it dealt with his children who attended the school and that he was not to come back to the school. Because of the circumstances surrounding his termination

and these incidents, Charles believed the note was from Yarbrough. After receiving the flowers, Charles immediately called Father Kenneth Ramon-Landry to notify him of what she believed to be a threat to her. Father Ramon-Landry testified that after Charles read the note to him, he instructed Charles to call the police, which she did. The police came to the school, made a report, took photographs, and instructed Charles to file a police report, which she did the same day. Kent, the florist, testified that Yarbrough purchased an arrangement of flowers in person under a fake name of James Smith, who was another Sacred Heart employee, but Yarbrough used his real phone number. Kent testified that Yarbrough wrote the note and requested that the arrangement be delivered to Charles at Sacred Heart. In explaining his actions, Yarbrough testified that he intended to send the card and flowers to Charles to notify her that he forgave her. Additionally, Yarbrough explained that in Matthew, Chapter 18, Jesus taught about forgiveness and letting God handle the rest. Yarbrough claimed he wrote “SEC. 97-37-17” on the card as a reference to a photograph he had received from a school parent, where Smith was photographed on campus during a traditional senior prank with a paint gun that appeared to be a firearm. Yarbrough did not offer an explanation as to what he meant by “gods [sic] wrath” to be on Charles, as he only stated that he hoped it would be just and swift. Yarbrough also clarified that his reference to “that family” meant his Sacred Heart family. Regarding the other incidents, Yarbrough stated that he was referring to suing Sacred Heart for breach of contract or monies owed, despite having hoped to work it out with the school outside of court. Less than a month before the floral arrangement incident, Yarbrough called and left a voicemail for the superintendent of Catholic Schools at the diocese office, stating that Sacred Heart had crossed a line and met their match this time after an incident involving one of Yarbrough’s children. Yarbrough and his wife transferred their children to another private school, but they believed that Sacred Heart did not give their children a good reference. Charles testified that the school did give a good reference, and that she felt nervous and scared after hearing the voicemail. Following the hearing, the trial court signed an order to extend the temporary restraining order pending issuance of a ruling on Sacred Heart’s request for a preliminary injunction. After considering the testimony and documentary evidence admitted at trial and having observed the appearance and demeanor of the parties and their witnesses, the trial court granted Sacred Heart’s request for a preliminary injunction. Additionally, the trial court addressed Yarbrough’s motion to dismiss Sacred Heart’s petition because it did not state a claim beyond injunctive relief. The trial court also distinguished this case from others and set forth its findings on each of the four factors the court must assess in determining whether the issuance of a preliminary injunction was warranted. In July of 2023, Sacred Heart moved for a permanent injunction. In August of 2023, the trial court held a hearing on the motion. At the hearing, Yarbrough renewed his motion to dismiss. Neither side presented new arguments, and no new evidence was presented aside from the fact that Yarbrough and his family moved to Meridian. After hearing caselaw for and against Yarbrough’s renewed motion to dismiss, the trial court denied the renewed motion to dismiss the petition and issued an order granting the permanent injunction. Yarbrough appealed.

## **ISSUES**

Whether the trial court erred in (1) granting injunctive relief because Sacred Heart’s petition for injunctive relief was not based on an underlying cause of action; and (2) issuing a preliminary and permanent injunction against Yarbrough as Sacred Heart did not show he was a threat to Sacred Heart or Charles.

## **HOLDING**

(1) Because Sacred Heart stated a legally cognizable claim for injunctive relief grounded in Sacred Heart’s right to protect its students and employees from the foreseeable risk of harm posed by Yarbrough’s conduct, the trial court did not err in granting injunctive relief. (2) Because there was substantial credible evidence in the record supporting the trial court findings that Yarbrough’s actions presented an imminent threat to Sacred Heart and grant of the preliminary injunction, and because a credible threat was created which was proof of an imminent threat to grant a permanent injunction, the trial court did not err in issuing a preliminary and permanent injunction against Yarbrough as Sacred Heart showed he was a threat to Sacred Heart and Charles. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Chancery Court.

## **DISSENT**

Presiding Judge Wilson argued that Sacred Heart’s petition for injunctive relief was not based on an underlying cause of action because the petition in this case did not assert an underlying cause of action, such as assault or trespass, and no claim was ever proved at trial. He argued that while these incidents were cause for legitimate concern, none of them constituted a trespass or assault or gave rise to any cognizable claim or cause of action against Yarbrough, so there was



no basis for the remedy of an injunction. The absence of the underlying cause also brought another issue as the plaintiff must show success on the merits, but if there was no underlying claim, there could not be success on the merits as there was no claim. Therefore, Presiding Judge Wilson stated that the judgment of the Forrest County Chancery Court should be reversed and rendered.

**Affirmed - 2023-CA-01219-COA (Jan. 14, 2025)**

Opinion by Presiding Judge Carlton - Dissent by Presiding Judge Wilson  
Hon. Sheila Havard Smallwood (Forrest County Chancery Court)

Daniel Myers Waide for Appellant - Christian Strickland, Robert Thomas Schwartz, & Carlee Victoria Dymond for Appellees

Briefed by [Andrew Grant](#)

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

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

### **BAKER V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - THEORY OF CASE** - A defendant is entitled to have jury instructions given which present his theory of the case; the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in another instruction, or is without foundation in the evidence

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - SELF-DEFENSE** - The mere statement by a defendant that he shot the victim in self-defense is wholly incapable by itself of raising a factual question, requiring its submission to the jury

#### **FACTS**

LeeKedrick Moore went to Walmart and heard his name being yelled across the parking lot but ignored it. When Moore heard his name being called out again, he turned and noticed two men, Anthony Spearman and Jackquan Baker, approaching him with weapons drawn. Spearman and Baker began shooting at Moore. Carrying a weapon of his own, Moore fired back at them. When Moore noticed he had been shot in his right foot, he moved closer towards the store entrance, and Spearman and Baker retreated. Baker was shot in the skirmish by Moore. In December 2021, a grand jury indicted Baker and Spearman for aggravated assault. At trial, the State called Moore to testify, and he denied being the initial aggressor and shooting himself in the foot. The State also called a Walmart employee who was not working the day of the incident but provided surveillance recordings to the jury that corroborated a majority of Moore's testimony. Baker raised the theory of self-defense but presented no witnesses or evidence. The defense proposed a self-defense jury instruction, which the trial court refused. At the jury instruction conference, the defense argued self-defense again by stating that Baker being shot was evidence of self-defense. The trial court disagreed and refused again. The jury convicted Baker and Spearman of aggravated assault. Baker filed a motion for a new trial which the trial court denied. Baker appealed.

#### **ISSUE**

Whether the trial court erred by refusing to give Baker's proposed jury instruction for self-defense.

#### **HOLDING**

(1) Because Baker did not provide any new evidence that supported self-defense for the jury to consider, because Moore was consistent in his retelling of events and insisted that Baker and Spearman initiated the encounter, because the video evidence introduced corroborated Moore's testimony and did not support self-defense, and because neither Baker nor Spearman testified in their own defense in order to put forth any theory of self-defense, the trial court did not err in

refusing to give Baker's proposed jury instruction for self-defense. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

**Affirmed - 2023-KA-01111-COA (Jan. 14, 2025)**

Opinion by Judge Lawrence

Hon. Alan D. Lancaster (Grenada County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Katy Taylor Sarver (Att'y Gen. Office) for Appellee

Briefed by [Kelly Li](#)

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

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## DAVIS V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - EVIDENCE - IMPEACHMENT OF WITNESSES** - Non-party witnesses for the State may be impeached under Miss. R. Evid. 609(a)(1) without balancing probative value and prejudicial effect of the evidence produced

**CONSTITUTIONAL LAW - SIXTH AMENDMENT - RIGHT OF CONFRONTATION** - One's right to confront an accuser in the form of a witness is not violated if he is not permitted to confront said witness and said witness is not the chief witness of the party opponent

**CRIMINAL LAW - EVIDENCE - REVERSALABLE ERROR** - There is reversible error if one is not permitted to confront a witness about a past conviction if such a witness was given favorable treatment regarding such a conviction in order to testify against the party

**CRIMINAL LAW - PROCEDURE - PROBATIVE VALUE DEMONSTRATION** - In order to bring in a prior conviction over ten years ago as impeachment evidence under Miss. R. Evid. 609(b), the proponent of such evidence must first demonstrate the probative value of the conviction by showing how the conviction suggests the witness is less than credible

**CRIMINAL LAW - POST-CONVICTION RELIEF - HARMLESS ERROR** - An error is harmless when it is obvious from the record that a fair jury could not have decided that the defendant was anything but guilty

### FACTS

A jury convicted Gregory Davis of one count of aggravated assault with a weapon against Eric Bishop and one count of possession of a weapon by a felon. At trial, Bishop, the chief witness, testified that Davis previously repeatedly accused him of stealing money. This later escalated when Davis approached a truck driven by Quartez Williams that Bishop was a passenger in. Bishop was shot twice by Davis. Alongside Williams and other witnesses, Quinton Bell, a relative of Davis's, testified as to the events. Bell testified that Davis came to his house with a gun, angered by several people who allegedly stole money from him. After Davis made verbal threats regarding them in the presence of Bell and Bell paid Davis to slate his anger, Bell testified that he left to run an errand. Davis was gone upon his return. Bell later testified that he was called by Davis to pick him up hours later because his car had broken down. Bell testified Davis admitted to shooting Williams, but did so because he had a knife, which was unsubstantiated. Bell was later questioned by a sheriff's deputy upon going to retrieve Davis's car and asserted on cross-examination he merely answered the questions asked to him by the deputy. Furthermore, on cross-examination, Davis's counsel attempted to question Bell about two 1995 forgery convictions, for which he received six- and seven-year sentences, in order to cast doubt on the credibility of his testimony. There was no indication Bell received preferential treatment regarding the charges to testify against Davis. After objection by the State, a hearing was held. The State argued Bell should not be questioned regarding the convictions because they fell outside the ten-year time limit imposed by Miss. R. Evid. 609(b). Davis's counsel argued that the convictions involved dishonesty, so the limit was not applicable. Questioning regarding the convictions was denied. Following his conviction and post-trial motion, Davis appealed.

### ISSUE

Whether the trial court erred in excluding Bell's 1995 forgery convictions.

## **HOLDING**

Because Bell was not a chief witness, because Bell did not receive favorable treatment to testify, because Davis's counsel did not demonstrate the probative value of the prior convictions, and because there was only harmless error, if any, the trial court did not err in excluding Bell's 1995 forgery convictions. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

**Affirmed - 2023-KA-00178-COA (Jan. 14, 2025)**

Opinion by Presiding Judge Carlton

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Abbie Eason Koonce & Scott Winston Colom (Att'y Gen. Office) for Appellee

Briefed by [Grant Hughes](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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## **GIBSON V. STATE**

### **CRIMINAL - FELONY**

**EVIDENCE - PRIVILEGES - SPOUSAL PRIVILEGE** - Miss. R. Evid. 601 (b) provides that if one spouse is a party, the other spouse may not testify as a witness in the case unless both consent, except in the following situations: (1) when called as a witness by the spouse who is a party; (2) in a controversy between the spouses; or (3) in a criminal case for: (a) a criminal act against a child; (b) contributing to the neglect or delinquency of a child; (c) desertion or nonsupport of a child under 16; and (d) abandonment of a child

**CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE** - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

**EVIDENCE - ADMISSIBILITY - COURT'S DISCRETION** - Relevancy and admissibility of evidence are largely within the discretion of the trial court and reversal may be had only where that discretion has been abused

### **FACTS**

Richard Gibson shot and killed his brother-in-law Billy Brown after an argument. Deputy Josh Evans responded to the shooting, which occurred at Gibson's home. When Evans arrived at Gibson's home, KaToya, Gibson's wife, was "yelling and screaming" that Gibson had "shot [her] brother," Brown. KaToya pointed to where Gibson was hidden and identified him as the shooter. Evans collected the gun Gibson was carrying and viewed a video from Gibson's security system. The video recorded the events that occurred before and after the shooting. Based on the video, Evans did not believe that Brown was the aggressor or that he was armed before the shooting. Evans assessed that Brown weighed about twice as much as Gibson and saw a cut on Gibson's ear but no other injuries. On the day of the shooting, Gibson asked KaToya to call Brown and ask him about some missing bullets. Later that day, Brown came over to their home, and KaToya heard Gibson "ask [Brown] about the bullets." Then, KaToya heard her children scream and ran to the living room. She witnessed Brown punch Gibson three times and then separated the men. KaToya quickly exited the home after she saw Gibson reach into his pocket. At trial, KaToya initially testified that she could not remember if Gibson had a gun, but after being reminded of her statement to Evans, she testified that she saw Gibson with a gun. As KaToya walked back towards the home, Gibson stated "[C]all the police man, that man been hit." She testified that she did not hear a gunshot. Annette Walker, KaToya's mother, testified that on the day of the shooting, her grandchildren told her that Gibson shot Brown. Once at Gibson's home, Walker witnessed Gibson with a gun. Gibson stated to Walker that "[he] just shot [Brown] in the arm to teach him a lesson. The coroner testified that "[t]he cause and manner [of death] was homicide due to gunshot wound to the shoulder that went into his chest." Gibson gave

testimony in his own defense. He stated that when he asked Brown about the missing bullets, Brown “just straight attacked” him without warning. Gibson testified that Brown punched him, so Gibson “fired one self-defense shot.” Gibson was found guilty of first-degree murder and was sentenced to life imprisonment. The trial court denied Gibson’s motion for judgment notwithstanding the verdict or new trial. Gibson appealed.

### **ISSUES**

Whether (1) the trial court committed plain error by permitting KaToya to testify against him and (2) the jury’s verdict was contrary to the overwhelming weight of the evidence.

### **HOLDING**

(1) Because Gibson failed to object to KaToya’s testimony and therefore in effect, consented to it, the trial court did not commit plain error by permitting KaToya to testify (2) Because the jurors formed their own conclusions of Gibson’s and Brown’s behavior from the video of the events before and after the shooting, and because the jury was properly instructed on Gibson’s self-defense claim, the jury’s verdict was not contrary to the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Franklin County Circuit Court.

### **CONCURRENCE**

Judge Lawrence argued that spousal competency rules had the potential for the justice system to reach improper results by potentially preventing important evidence from the defendant’s spouse. In his concurrence, he suggested that Miss. R. Evid. 601 be modified or abolished, allowing Miss. R. Evid. 504 to control whether a spouse should be prohibited from testifying. He stated that Rule 601 provided a potential rise for a defendant to be found not guilty when he or she plainly committed the crime. As an alternative, he suggested that a violent crime exception be added to Rule 601. He stated that the amended rule could permit a spouse to testify in cases where it would not otherwise be privileged under Rule 504.

#### **Affirmed - 2023-KA-00704-COA (Jan. 14, 2025)**

Opinion by Presiding Judge Wilson - Concurrence by Judge Lawrence

Hon. Debra W. Blackwell (Franklin County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Kyra Childress](#)

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

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## **SEALES V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL LAW - ATTEMPTED FIRST-DEGREE MURDER - INTENT** - Where a defendant has not expressed his or her intent, the only method by which intent may be proven is by showing the acts of the person involved at the time, and by showing the circumstances surrounding the incident

**CRIMINAL PROCEDURE - SUFFICIENCY OF THE EVIDENCE - NEW TRIAL** - The jury is the sole judge of the credibility of witnesses, and the jury’s decision based on conflicting evidence will not be set aside where there is substantial and believable evidence supporting the verdict

### **FACTS**

In January 2023, Corderro Seales got into an argument with Felicia Rush and her daughter, Seales’s girlfriend, that devolved into physical violence. Agitated by the altercation and under the influence of drugs, Seales proceeded down the street toward the home of Dennis Carter, who warned Seales to keep his argument away from his property. As he went, Rush heard him threaten to kill someone, though his intended target was unknown. Seales paced in the street, rambling, yelling, and using profanity. Seales said “he is going to learn today” before Seales rushed toward Carter. Seales punched Carter in the ribs before stabbing him in the back five times. Seales fled the scene. Carter’s injuries were so

severe that he had to be airlifted for treatment. Seales was indicted for and found guilty of attempted first-degree murder as a result. As a habitual offender, he was sentenced to serve twenty-five years in the custody of the Mississippi Department of Corrections. The trial court denied his motion for a new trial. Seales appealed.

### ISSUE

Whether the evidence presented at trial was sufficient to convict Seales for attempted first-degree murder.

### HOLDING

Because Seales's intent could be inferred from his statements indicating homicidal intent, his violent actions, and the context surrounding the stabbing, there was sufficient evidence to support Seales's conviction. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

**Affirmed - 2023-KA-01376-COA (Jan. 14, 2025)**

Opinion by Judge Emfinger

Hon. Mark Sheldon Duncan (Neshoba County Circuit Court)

Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Alexis Cobbs](#)

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

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## **STEWART V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - PREJUDICIAL EFFECT** - Prosecutors have broad leeway in forming arguments but are restricted from employing tactics which are inflammatory, highly prejudicial, or reasonably calculated to unduly influence the jury; a trial judge, not an appellate court, is in the best position to determine if an alleged objectionable remark has prejudicial effect

**CRIMINAL PROCEDURE - MISTRIAL - IMPROPER OCCURENCES** - Mistrials are reserved for those instances where the trial court cannot take any action which could correct improper occurrences inside or outside the courtroom; the grant of a mistrial is left to the sound direction of the trial judge

**CONSTITUTIONAL LAW - SIXTH AMENDMENT - CONFRONTATION CLAUSE** - The Confrontation Clause of the Sixth Amendment preserves the right of defendants to confront witnesses and accusers, but does not guarantee an absolute right to face-to-face meetings

### FACTS

A jury convicted Dameion Stewart of one count of armed carjacking and three counts of armed robbery. Three perpetrators, one assumed to be Stewart, ensued in a struggle with three women who had just parked and were exiting their rental vehicle at their home. One of the women testified that she had been pulled out of the car with a gun drawn to her right temple. After the perpetrators drove off in the rental car, one of the victims called 911 to report the incident. A few days later, the car was located in the back of Stewart's residence by Officer Justin Roberts after his mother, Eurkisha Stewart ("Eurkisha"), called 911 regarding a suspicious vehicle. After being identified in a line up by one of the victims, Stewart was arrested. The day before trial, the State learned that Roberts wanted to testify remotely. The defense objected, arguing that they had received no notice. The trial court instructed the State to file a notice regarding Roberts's remote testimony, and the notice was filed that day. At trial, the trial court announced that it had reviewed the notice and found good cause to allow Roberts to proceed closed circuit. Defense counsel again objected, citing only improper timing and notice. During the testimony of Eurkisha, the defense objected to the line of questioning by the State regarding the death of Eurkisha's other son, who died in a stolen car. The trial court sustained the objection but denied the defense's motion for a mistrial since the line of questioning had been caught before the jury could hear Eurkisha's answer. The defense failed to remind or insist that the trial court instruct the jury disregard the State's question. The jury convicted Stewart. Stewart appealed.

## **ISSUES**

Whether the trial court (1) erred in denying Stewart's motion for a mistrial; and (2) violated Stewart's rights to confront a witness by allowing Roberts to testify virtually.

## **HOLDING**

(1) Because the defense's objection was immediately sustained before the State's question about Stewart's younger brother could be answered, and because Stewart failed to remind or insist the trial court to instruct the jury to disregard the State's question, the trial court properly denied the motion for mistrial. (2) Because Stewart did not assert his Confrontation Clause objection in a timely manner, Stewart's objection was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

### **Affirmed - 2023-KA-00461-COA (Jan. 14, 2025)**

En Banc Opinion by Judge Emfinger

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Elizabeth Murphree](#)

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

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