

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 24, 2024**SUPREME COURT - CIVIL CASES****MCGEE V. MCGEE****CIVIL - DOMESTIC RELATIONS**

FAMILY LAW - MARITAL ASSETS - FERGUSON FACTORS - Marital assets must be equitably divided pursuant to the following factors: (1) substantial contribution to the accumulation of the property; (2) the degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise; (3) the market value and the emotional value of the assets subject to distribution; (4) the value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse; (5) tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution; (6) the extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties; (7) the needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and (8) any other equitable factor

FAMILY LAW - CUSTODY - ALBRIGHT FACTORS - The essential consideration in child custody cases is the best interest and welfare of the child, which must be weighed in accordance with the following factors: (1) age, health and sex of the child; (2) a determination of the parent that has had the continuity of care prior to the separation; (3) which parent has the best parenting skills and which has the willingness and capacity to provide primary child care; (4) the employment of the parents and responsibilities of that employment; (5) physical and mental health and age of the parents; (6) emotional ties of parent and child; (7) moral fitness of the parents; (8) the home, school and community record of the child; (9) the preference of the child at the age sufficient to express a preference by law; and (10) stability of home environment and employment of each parent and other factors relevant to the parent-child relationship

FAMILY LAW - DIVORCE - ADULTERY - While adultery may not be used as a sanction in custody awards, moral fitness encompasses the charge of adultery

FACTS

Jessica McGee (“Jessica”) and Alex McGee (“Alex”) divorced in 2014 on grounds of irreconcilable differences. They agreed to a property settlement, and Jessica was granted physical custody of their child while Alex received visitation rights. Jessica subsequently purchased a new home, and both she and Alex started dating other people. There was no evidence that Jessica and Alex ever worked together during this time or accumulated property through joint efforts. In 2017, Jessica and Alex rekindled their relationship, remarried, and welcomed two more children. Around 2022, Alex discovered that Jessica was having an affair and filed for divorce on grounds of adultery. Jessica sought sole custody of the three children and equitable distribution of the parties’ assets accumulated from the date of their first marriage. Specifically, Jessica maintained that the division of Alex’s 401(k) should start on the date of the first marriage because she and Alex were still working together and accumulating assets during their time of separation. Jessica also asserted that she and Alex were unable to communicate efficiently, that she had been the children’s primary caregiver, and that Alex’s work schedule precluded him from providing necessary care and assistance to the children. Despite this, the trial court awarded joint custody of the three children and divided marital assets based on the date of the second marriage. Jessica appealed.

ISSUES

Whether the trial court erred by (1) classifying, valuing, and dividing the parties' assets and (2) awarding joint physical and legal custody of the minor children.

HOLDING

(1) Because the first marriage ended in divorce, because a property settlement agreement was signed, and because Jessica offered no evidence that she and Alex accumulated assets together during their separation, the correct date of division for marital property was the date of the second marriage. (2) Because there was no evidence that the trial court focused too heavily on Jessica's infidelity, because there was no evidence that Jessica and Alex were unwilling to cooperate with joint custody, and because Jessica testified at trial that the children needed both her and Alex, joint custody of the children was feasible. Therefore, the Supreme Court affirmed the judgment of the Montgomery County Chancery Court.

Affirmed - 2023-CA-00695-SCT (Oct. 24, 2024)

Opinion by Justice Coleman

Hon. Mitchell M. Lundy Jr. (Montgomery County Chancery Court)

A. E. (Rusty) Harlow Jr. & Kathi Chrestman Wilson for Appellant - Luther Putnam Crull Jr. for Appellee

Briefed by [Kellis Adams](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 22, 2024

COURT OF APPEALS - CIVIL CASES

BAUR V. RIBELIN

CIVIL - REAL PROPERTY

PROPERTY - ADVERSE POSSESSION - ELEMENTS - In order to establish a claim of adverse possession, a claimant must prove by clear and convincing evidence that his possession was (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful

TORTS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - ELEMENTS - In order for a claimant to prove a claim of intentional infliction of emotion distress, the conduct of the defendant must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community; a plaintiff may not recover for a claim of negligent infliction of emotional distress without showing that he or she suffered a physical injury

TORTS - TRESPASS - ANTIQUITIES - Pursuant to Miss. Code Ann. § 39-7-31, entry upon the lands of another to intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historical archeological site, American Indian or aboriginal remains located in, on or under any private lands within the State of Mississippi is forbidden

APPELLATE PROCEDURE - REMEDIES - ATTORNEY'S FEES - In order for an appellate court to award attorney's fees to a successful appellee, the underlying claim must have been frivolous, which is defined as without hope of success

FACTS

In 1960, Willis McGee conveyed the property at issue to J.R. Shirley. In 1996, title passed to Shirley's daughter, Nancy Ribelin, and her brother. Ribelin's brother quitclaimed his ownership to her in 2004. At some point while Shirley still held title, Sandra Baur and her father began living on an adjacent piece of land. Baur testified that in 1989, she began treating the contested forty-seven acres as her own by providing upkeep and maintenance, along with removing trespassers. In a series of letters spanning from the 1980s to the early 2010s, Baur recognized that title to the land was

vested in either Ribelin or Shirley. Nonetheless, Baur indicated her intent to pursue ownership via adverse possession. In a 1989 letter, Baur wrote to notify all area property owners of her intent to occupy, maintain, and establish three parcels of land, even though she acknowledged that Shirley owned the property. In 1998, Baur wrote to people who built a residence on the property stating that they set up residence on land that they did not own and that she claimed the property since 1989 even though the property was owned by Ribelin and her brother. In 2001, Baur wrote that she considered it her property. In 2002, Baur stated that her claim of adverse possession had matured. In 2010, Baur wrote letters to Ribelin and Ribelin's lawyer, attempting to purchase the property, ones in which she acknowledged that she was aware that Ribelin owned the property. Ribelin repeatedly refused to sell Baur the property. In 2015, Baur filed a quitclaim deed attempting to convey the property to herself. In 2021, Baur testified that she paid property taxes from 2015 to 2020, but she still attempted to purchase the property from Ribelin. In September 2021, Baur filed a claim asserting ownership by adverse possession, seeking quiet title to the property. Ribelin filed her answer and asserted counterclaims for removal of cloud on title, intentional and negligent infliction of emotion distress, slander of title, and the unlawful removal of survey markers. In July 2022, Ribelin asked the chancery court to inspect the property. After two days of trial and a visit to, the chancery court found that while Baur had satisfied two elements of adverse possession, exclusive and peaceful use (until 2010), Baur's claim for adverse possession ultimately failed due to the fact that she could not prove by clear and convincing evidence that her possession was based on a claim of ownership; actual or hostile; open, notorious, and visible; or continuous and uninterrupted for a period of ten years. The chancery court determined that since Baur could not meet all of the elements for adverse possession, her claim failed, and the chancery court granted Ribelin's claim to remove cloud on title. Next, the chancery court denied Ribelin's claim for slander of title, stating that no actual malice existed in Baur's claim to title. The chancery court also denied Ribelin's claim regarding Baur's removal of survey markers as a matter of law. Finally, the chancery court addressed Ribelin's claim for intentional and negligent infliction of emotional distress, ruling that since Ribelin offered no medical testimony or documentation evidencing such distress, her claim was denied. Both parties additionally claimed that they were entitled to attorney's fees and costs based on the pursuance of a case without legal or factual support. That claim was denied by the chancery court. Baur appealed, and Ribelin cross-appealed.

ISSUES

Whether (1) the chancery court erred in denying Baur's claim for adverse possession; (2) the chancery court erred in finding that Baur was not liable for the tort of slander of title; (3) Ribelin should have recovered for intentional or negligent emotional distress; (4) Ribelin could recover damages for the removal of survey markers; (5) Ribelin should have been awarded attorney's fees; and (6) either party was entitled to appellate attorney's fees.

HOLDING

(1) Because Baur could not prove a claim of ownership, the chancery court did not err in denying Baur's claim for adverse possession. (2) Because Baur filed a claim for title under reasonable belief of title and did not act maliciously when committing such act, the chancery court did not err in finding that Baur was not liable for the tort of slander of title. (3) Because Baur did not act maliciously or in such a way that would evoke outrage or revulsion, and because Ribelin did not provide any proof of emotional distress, the chancery court did not err in denying Ribelin recovery for intentional or negligent emotional distress damages. (4) Because Miss. Code Ann. § 39-7-31 allows for injunctive relief in civil actions instead of damages, and because Ribelin wrongly sought damages, the chancery court did not err in denying Ribelin damages for the removal of survey markers. (5) Because there was no abuse of discretion on the part of the chancery court in denying attorney's fees, the chancery court did not err. (6) Because neither the appeal nor the cross-appeal were frivolous, neither party was entitled to appellate attorney's fees. Therefore, on direct appeal, the Court of Appeals affirmed the judgment of the Perry County Chancery Court. On cross-appeal, the Court of Appeals affirmed the judgment of the Perry County Chancery Court.

On Direct Appeal: Affirmed. On Cross-Appeal: Affirmed - 2023-CA-00018-COA (Oct. 22, 2024)

Opinion by Judge McCarty

Hon. Michael Chadwick Smith (Perry County Chancery Court)

Orvis A. Shiyou Jr. & Tisdale Christian Shiyou for Appellant - Samuel Steven McHard & Paul Manion Anderson for Appellee

Briefed by [Eleanor Kast](#)

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

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JOHNSON V. SW GAMING LLC

CIVIL - PERSONAL INJURY

TORTS - PREMISES LIABILITY - ELEMENTS - To recover damages in a premises liability action, a plaintiff must show (a) the duty owed by the landowner; (b) a breach of that duty; (c) damages; and (d) a causal connection between the breach and the damage

TORTS - PREMISES LIABILITY - FORESEEABILITY - In premises liability cases, there are two ways to establish foreseeability in cases of assault by a third person; cause to anticipate the assault may be imputed to the premises owner by virtue of (1) actual knowledge of the third party's violent nature or (2) actual or constructive knowledge that an atmosphere of violence exists on the premises

TORTS - RESPONDEAT SUPERIOR - SCOPE - Where an employee acts for a purpose of his own and not in service of his employer's interest, the employer cannot be held liable

FACTS

In December 2015, a Dolgencorp LLC ("Dollar General") distribution center held a party for its employees and invited guests at Harlow's Casino Resort and Spa, owned by SW Gaming LLC ("Harlow's"). Terrance Johnson attended the party as a guest of Kewanda Williams, a distribution center employee. Johnson and Williams were romantically involved "on and off." The party was in Harlow's Event Center adjacent to the main casino. Jamal Mayfield and Roderick Spain were co-workers of Williams who also attended the party. Mayfield and Williams were formerly romantically involved for a brief period. At some point, Johnson approached Mayfield. Mayfield and Spain then told distribution center manager, Lawrence Perkins, that someone approached them about a woman Mayfield was previously involved with. Johnson and Mayfield later provided conflicting testimony as to whether Johnson physically and verbally threatened Mayfield when Johnson approached him at the party. Mayfield and Spain then left. In the parking lot, Johnson and Mayfield had an altercation. Though testimony conflicted about the beginning of the conflict, Johnson ultimately pushed Mayfield to the ground, and Mayfield shot Johnson. Johnson alleged in the instant negligence action that Harlow's and Dollar General failed to provide adequate security given the history of criminal activity in the area. Johnson also alleged that Harlow's and Dollar General failed to screen all party attendees for weapons and allowed an unreasonable condition to exist. Perkins was later added as a defendant, alleging that he failed to practice Dollar General policies by not investigating the earlier reported confrontation during the party. A security guard working the night of the incident stated there was no security officer patrolling the parking lot when the incident occurred because a staff shortage required him to work at the Event Center door rather than patrol as was custom. Evidence showed that Harlow's had forty-three reported incidents to the sheriff's office within a five-year period. Only eight occurred in the parking lot, and only two involved a firearm. Those two incidents did not result in a shooting. Johnson's expert also provided an opinion that it was negligent to leave the three parking lots unmonitored during an event. Harlow's had an expert witness provide an opinion that the casino did not have an atmosphere of violence that would put them on notice of a potential incident. The trial court granted Harlow's motion for summary judgment. Dollar General and Perkins argued Johnson was a licensee and their duty was only to not willfully or wantonly hurt him. The trial court granted Dollar General and Perkins's motion for summary judgment. Johnson appealed.

ISSUES

Whether the trial court erred by (1) applying premises liability precedent when it granted Harlow's motion for summary judgment and (2) granting Dollar General and Lawrence Perkins's joint motion for summary judgment.

HOLDING

(1) Because Johnson alleged that his injury resulted from the dangerous condition of the premises, his claim was not one of simple negligence but of premises liability, and because Harlow's had no actual or constructive knowledge of either Mayfield's violent nature or that a violent atmosphere existed in the parking lot, the trial court did not err in granting summary judgment for Harlow's. (2) Because Dollar General had no control over the parking lot and had no

obligation to Johnson once he left the party, and because Perkins could not reasonably foresee that a guest unknown to him would be shot, the trial court did not err in granting summary judgment in favor of Dollar General and Perkins. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2023-CA-00505-COA (Oct. 22, 2024)

Opinion by Judge McDonald

Hon. Richard A. Smith (Washington County Circuit Court)

Charles M. Merkel Jr., Corrie Schuler, & Edward P. Connell Jr. for Appellant - Harris Frederick Powers III, Charles Cameron Auerswald, Richard L. Kimmel, & John H. Daniels III for Appellees

Briefed by [Lexi Killebrew](#)

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

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MALONE V. JACKSON CNTY. DEP’T OF CHILD PROT. SERVS.

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - BYPASSING REUNIFICATION - Pursuant to Miss. Code Ann. § 43-21-603(7)(c), at the disposition stage, youth court may bypass reasonable efforts to reunite child who has been adjudicated neglected if the court determines that (1) the parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or (2) the parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or (3) the parental rights of the parent to a sibling have been terminated involuntarily; and (4) the effect of the continuation of the child’s residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child; this is not an exhaustive list of aggravated circumstances

FAMILY LAW - CUSTODY - BEST INTEREST OF CHILD - The polestar consideration in a child custody case is the best interest of the child

FAMILY LAW - CUSTODY - EVIDENCE AT DISPOSITION HEARINGS - Pursuant Miss. Code Ann. § 43-21-603(2), youth court may consider any evidence at a disposition hearing that is material and relevant to the disposition of the cause, including hearsay and opinion evidence

FACTS

In November 2022, Latisha H. (“Latisha”) gave birth to A.H. At the time of A.H.’s birth, Latisha tested positive for cocaine, and A.H. tested positive for cocaine and fentanyl. A.H.’s father, Redonn Malone, was incarcerated on charges of felony aggravated assault and felony bond revocation at the time of A.H.’s birth. The youth court entered an emergency custody order placing A.H. in the custody of Child Protection Services (“CPS”), appointed a guardian ad litem, and set a shelter hearing. At the shelter hearing, the youth court entered an order stating that A.H. would remain in CPS’s custody. The youth court also ordered DNA testing for Malone and A.H. to confirm A.H.’s paternity. The youth court entered a separate order referring the matter to the youth court prosecutor’s office for formal filing of a neglected child complaint. The youth court prosecutor filed a one-count petition in youth court alleging that A.H. was a neglected child due to Latisha’s substance abuse. In December 2022, the youth court conducted an adjudicatory hearing regarding the petition, where Malone was present, and Latisha was not. At the hearing, CPS employee Naomi McNeely outlined the reasons that A.H. was taken into custody, explaining that, a few days before giving birth, Latisha tested positive for cocaine, and A.H. tested positive for cocaine and fentanyl immediately after birth. McNeely also stated that Malone was currently incarcerated in the detention center for felony aggravated assault and felony bond revocation. The youth court proceeded to adjudicate A.H. as neglected. In January 2023, the youth court held a disposition hearing that confirmed Malone as A.H.’s father and continued the case. When the court reconvened, the youth court considered reunification plans for Malone after determining that reunification efforts with Latisha should be bypassed. McNeely recommended Malone enter a service plan with CPS and complete the rehabilitative tasks set

forth by CPS. The service plan recommended a permanency plan of reunification with the parents, along with a concurrent plan of custody with a relative. Youth court employee Katy Frazier disagreed and requested that the court bypass any reasonable efforts toward reunification of A.H. with Malone because of Malone's extensive history of severe violent crimes in Mississippi and other states, including involuntary manslaughter, domestic violence, aggravated assault, and use of a deadly weapon. The guardian ad litem agreed with Frazier and sought to admit Malone's criminal record into evidence. Malone's counsel objected, but the court made no ruling on the objection. The exhibit list indicated that no police reports were entered but included booking listing reports from various police departments. Surveillance footage regarding the aggravated assault charge was also entered into evidence, but it was not listed as an exhibit. In February 2023, the youth court issued its disposition order, stating it declined CPS's recommendation for reunification because Malone's criminal history was extensive enough to warrant aggravating circumstances, and it bypassed reasonable efforts for reunification. The youth court ordered that A.H. remain in CPS custody and held that returning A.H. to Malone went against A.H.'s best interests. In March 2023, the youth court held a permanency hearing, where McNeely testified regarding A.H.'s proposed permanency plan, which was to terminate Malone's parental rights and place A.H. with a relative. Malone objected to the disposition order, and the court reiterated that Malone's violent criminal past constituted an aggravated circumstance and adopted CPS's proposed permanency plan. Malone appealed.

ISSUES

Whether the youth court erred (1) in expanding aggravated circumstances to include Malone's violent criminal history; and (2) in considering information outside the record about Malone's prior convictions and alleged crimes.

HOLDING

(1) Because the disposition order reflected that the youth court followed statutory guidelines in making its decision to bypass reasonable efforts to reunify A.H. with Malone, the youth court did not err in bypassing reunification. (2) Because the evidence and testimony regarding Malone's extensive criminal history was material and relevant to the disposition hearing, the youth court did not err in considering Malone's criminal history. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Youth Court.

DISSENT

Judge McDonald argued that the majority failed to correctly apply the criteria set forth in Miss. Code. Ann. § 43-21-603(7)(c) for bypassing reunification at the disposition stage. She emphasized a two-prong test must be met before reunification, one being that the parent subjected the child to aggravating circumstances and then whether that the parent's home would be contrary to the child's best interests. She argued there was no proof that A.H. was subjected to Malone's criminal violence.

Affirmed - 2023-CA-00420-COA (Oct. 22, 2024)

En Banc Opinion by Presiding Judge Carlton - Dissent by Judge McDonald
Hon. Stacie Elizabeth Zorn (Jackson County Youth Court)
Jessica Lynn Bates for Appellant - Michael Wilson Breland for Appellee
Briefed by [Victoria Warren](#)
Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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COURT OF APPEALS - CRIMINAL CASES

HAMPTON V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - CRIMINAL APPEALS - PLAIN-ERROR DOCTRINE - The plain-error doctrine applies to illegal sentencing because an accused has a fundamental right to be free of an illegal sentence

CRIMINAL LAW - SENTENCING - ILLEGAL SENTENCES - An illegal sentence is one that is above and beyond the maximum statutory penalty for the crime

CRIMINAL LAW - MURDER - SENTENCING - Pursuant to Miss. Code Ann. § 97-3-21(1), individuals convicted of first-degree murder are required to be sentenced to life imprisonment

FACTS

A jury convicted Ja'Cory Hampton of first-degree murder and using a firearm during the commission of a felony. Hampton was sentenced to life imprisonment for the murder, in accordance with Miss. Code Ann. § 97-3-21(1). For the firearm enhancement, the trial court ordered Hampton to serve a consecutive five-year sentence pursuant to Miss. Code Ann. § 97-37-37(1). The circuit court denied Hampton's post-trial motion for judgment notwithstanding the verdict or, alternatively, a new trial. Hampton appealed.

ISSUE

Whether the trial court erred by adding a firearm enhancement to Hampton's sentence of life imprisonment.

HOLDING

Because the mandatory sentence for first-degree murder exceeded the five-year firearm enhancement, the trial court erred by adding a firearm enhancement to Hampton's sentence of life imprisonment. Therefore, the Court of Appeals affirmed in part and vacated in part the judgment of the Bolivar County Circuit Court.

Affirmed in Part; Vacated in Part - 2023-KA-00068-COA (Oct. 22, 2024)

Opinion by Judge Smith

Hon. Albert B. Smith III (Bolivar County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Dixon Stone](#)

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