

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 12, 2024***SUPREME COURT - CIVIL CASES*****ARCHIE V. SMITH****CIVIL - ELECTION CONTEST**

ELECTION CONTEST - APPELLATE REVIEW - DEADLINES - Pursuant to Miss. Code Ann. 23-15-927, a contestant must file his or her petition for judicial review within ten days after any contest or complaint has been filed with a county or state executive committee

CIVIL PROCEDURE - TIME - COMPUTATION - Under Miss. Code Ann. § 1-3-67, when computing time, the last day of a prescribed period shall not include a Saturday, Sunday or legal holiday, or any other day when the courthouse or clerk's office is closed, with or without legal authority

FACTS

After losing to Anthony Smith in a primary runoff election, David L. Archie requested a review of the election from the Hinds County Democratic Executive Committee (“HCDEC”) on August 28, 2023, alleging that irregularities had occurred. The subsequent deadline for Archie to petition the circuit court for judicial review of the election contest was ten days later, on September 7, 2023. However, on September 7, 2023, the Hinds County courthouse experienced a cyber-attack which resulted in the circuit clerk's office doors being locked to the public beginning around noon. Archie filed his petition for judicial review on September 8, 2024, and named Smith as a defendant. Smith filed a motion to dismiss Archie's petition as untimely and argued that Archie could have filed his petition on September 7 either in the morning when the circuit clerk's office was open to the public or by using means other than the clerk's office. Archie argued that, because the circuit clerk's office was closed to the public on September 7, it was not open for business as required by the law and, thus, his September 8 filing was timely. The trial court granted Smith's motion to dismiss. Archie appealed.

ISSUE

Whether the clerk's office was open or closed on September 7, 2023.

HOLDING

Because the trial court made no findings as to whether the circuit clerk's office was open or closed on September 7, 2023, there was insufficient evidence to determine whether Archie timely filed his petition. Therefore, the Supreme Court vacated and remanded the judgment of the Hinds County Circuit Court.

Vacated & Remanded - 2023-EC-01149-SCT (Sept. 12, 2024)

Opinion by Presiding Justice King

Hon. Barry W. Ford (Hinds County Circuit Court)

Matthew Daniel Wilson for Appellant - Warren Louis Martin Jr. for Appellee

Briefed by [Amber Meeks](#)

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

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SUPREME COURT - ORDERS

POWERS V. STATE

EN BANC ORDER

ORDER

This en banc Order by the Supreme Court was made in consideration of Stephen Elliot Powers’s Motion for Access to Jurors and Disclosure of Documents, First Supplement to Successor Petition for Post-Conviction Relief, and request for oral arguments in both the motion and petition. Powers claimed that newly discovered evidence showed that the State offended his due process rights by violating *Brady v. Maryland*. The Court found that *Brady* and its related prosecutorial-misconduct claims were time and successive writ barred. Additionally, the Court found that Powers did not meet the newly discovered evidence exception. Therefore, the Supreme Court denied Powers’s Motion for Access to Jurors and Disclosure of Documents, First Supplement to Successor Petition Post-Conviction Relief, and request for oral arguments.

OBJECTION

Presiding Justice Kitchens argued that the Supreme Court should grant Powers’s request to access jurors as part of his post-conviction investigation into juror bias and ineffectiveness of his trial and post-conviction counsel, who did not assert a *Batson* challenge. Additionally, he argued for the Supreme Court to grant Powers’s more expansive request for documents to facilitate Powers’s investigation into alleged *Brady* violations.

Denied - 2023-DR-00895-SCT (Sept. 11, 2024)

En Banc Order by Justice Coleman - Objection by Presiding Justice Kitchens

Briefed by [Lauren Bowlin](#)

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

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SUPREME COURT - CRIMINAL CASES

FLUKER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - LESSER-INCLUDED OFFENSE - RIGHT TO INSTRUCTION - A defendant has the right to request a lesser-included offense instruction by pointing to some evidence in the record from which a jury could reasonably find the defendant not guilty of the crime with which he was charged and at the same time find him guilty of a lesser-included offense

CRIMINAL LAW - CONSPIRACY - SEPARATE OFFENSE - Conspiracy is a separate offense that requires the jury to determine the nature of the agreement between conspirators, independent of whether the object crime was committed

FACTS

Laquon Fluker was convicted of conspiracy to commit aggravated assault which was affirmed by the Court of Appeals. The victim, James Bryant, testified that he went into another prison cell to talk to someone when Fluker and Kenneth Smith jumped Bryant and stabbed him. Bryant testified that both Fluker and Smith stabbed him, but he was not able to authenticate whose shank was in evidence. At trial, Joseph Reid, Fluker’s co-conspirator, testified that Bryant bullied people, so they came up with a plan to beat him up and that stabbing was never discussed. Fluker argued that he was

entitled to the instruction based on Reid's testimony and his claim that stabbing was not discussed as part of the plan. The trial court denied Fluker's request for a lesser-included-offense of conspiracy to commit simple assault instruction, and the Court of Appeals affirmed the denial. Fluker petitioned for writ of certiorari.

ISSUE

Whether the trial court erred in denying the lesser-included offense jury instruction of conspiracy to commit simple assault in Fluker's trial.

HOLDING

Because the testimony of Reid could support a reasonable jury's finding that Fluker and his co-conspirators agreed to commit the crime of simple assault, the trial court erred in denying the lesser-included offense jury instruction of conspiracy to commit simple assault in Fluker's trial. Therefore, the Supreme Court reversed and remanded the judgment of the Forrest County Circuit Court.

Reversed & Remanded - 2022-CT-00692-SCT (Sept. 12, 2024)

En Banc Opinion by Justice Chamberlin

Hon. Jon Mark Weathers (Forrest County Circuit Court)

George T. Holmes & Hunter N. Aikens (Pub. Def. Office) for Appellant - Allison Horne (Att'y Gen. Office) for Appellee

Briefed by [Andrew Moyer](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 10, 2024

COURT OF APPEALS - CIVIL CASES

DEERE V. TAYLOR

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - CLAIM SPLITTING - DUPLICATIVE ACTIONS - Claim-splitting occurs when a plaintiff attempts to bring in a second forum claims that were part of a single body of operative facts already litigated in another forum; a single cause of action cannot be split so as to be properly made the subject of different actions; plaintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time

CIVIL PROCEDURE - CLAIM SPLITTING - JUDICIAL RESOURCES - Claim splitting is prohibited to protect scarce judicial resources and to minimize the hardship on defendants who are forced to repeatedly defend the same action

CIVIL PROCEDURE - SERVICE OF PROCESS - REBUTTABLE PRESUMPTION - Where the process server has properly executed a return, there is a presumption that service of process has occurred; the presumption that service has been effected is rebuttable through the use of extensive evidence, including the testimony of the party who is contesting service; the plaintiff bears the burden of coming forward with evidence of proper service if it is challenged

CIVIL PROCEDURE - SERVICE OF PROCESS - GOOD CAUSE EXTENSION - The court shall not dismiss a matter if the plaintiff can establish good cause for failing to serve process on a defendant within 120 days of filing her complaint; to meet the burden of proof of good cause, the plaintiff must demonstrate that a diligent effort was made to effect timely service; good cause is likely to be found when the plaintiff's failure to complete service in a timely fashion is the result of a third person

FACTS

Jamica Deere was involved in a car wreck with Jamarcus Lewis. Deere filed a complaint against Lewis and the car's owner, Herman Taylor. Deere took steps to try and serve Lewis and Taylor but was unsuccessful. Deere never took any

further steps with this action. Approximately 160 days after the summons were issued, Deere filed a second complaint against the same defendants in the same trial court. She was subsequently allowed to file an amended complaint and given an extension of time to serve the defendants. Deere hired a law enforcement officer as a process server. After several unsuccessful attempts to find Lewis, the summons and complaint were served at an address given by Lewis's relative. In the meantime, the first action was dismissed as stale. After a hearing for the second action, Lewis provided his affidavit as well as an affidavit from Lisa Lewis. Deere presented sworn testimony from the process server stating Lisa informed the officer she was Lewis's relative and gave him Lewis's address. This testimony directly contradicted Lewis's and Lisa's statements and indicated Lewis's relatives were deliberately deceiving the process servers of his whereabouts. The trial court found that because the address used was not confirmed to be Lewis's residence, and because Deere did not show good cause, Deere failed to complete proper service. It dismissed Deere's second-filed action for violating the doctrine of claim-splitting and for insufficient service of process. Deere appealed.

ISSUES

Whether (1) Deere's second-filed complaint was barred by the claim-splitting doctrine and the statute of limitations and (2) service of process for the amended complaint was improper and untimely without good cause.

HOLDING

(1) Because Deere did not maintain the first claim and united in one proceeding all matters regarding her cause of action against the defendants, the second-filed complaint was not barred by the claim splitting doctrine. (2) Because Deere produced evidence that contradicted and refuted Lewis's affidavits, and because her failure to properly serve Lewis was a result of misleading and deceptive conduct by Lewis and his family members, there was good cause for her failure to serve him properly and service of process deficiencies did not warrant dismissal. Therefore, the Court of Appeals reversed and remanded the judgment of the Madison County Circuit Court.

DISSENT

Presiding Judge Carlton argued that, because a trial court must formally dismiss a complaint before it becomes a nullity, and because Deere filed her second complaint before the trial court dismissed the first complaint, Deere maintained two lawsuits at the same time and met the test for impermissible claim-splitting. She further argued that the complaints wasted judicial resources and undermined the efficient disposition of cases. In addition, the statute of limitations period was not tolled and barred Deere's complaint because she had legitimate methods to preserve her claim but did not do so. Therefore, she argued that the dismissal of the suit based upon the claim-splitting doctrine and the statute of limitations period elapsing was proper.

Reversed & Remanded - 2023-CA-00063-COA (Sept. 10, 2024)

En Banc Opinion by Judge McCarty - Dissent by Presiding Judge Carlton

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

Kimberly Celeste Banks for Appellant - Mark C. Carroll & Luke Enterkin Whitaker for Appellees

Briefed by [Anne Marie Lundy](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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WELLS V. WELLS

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - JURISDICTION - IMPROPER SERVICE - In the absence of proper service, the court lacks personal jurisdiction

CIVIL PROCEDURE - PROCESS - IMPROPER SERVICE - Although the failure to make proof of service does not affect the validity of service, the absence of some proof of the receipt of a summons makes the notice questionable

CIVIL PROCEDURE - SERVICE OF PROCESS - BURDEN OF PROOF - When a defendant presents evidence to rebut the presumption of proper service, the burden shifts back to the party asserting the validity of service to prove it was properly executed

FACTS

During their marriage, James Wells and Kathryn Wells lived together in a trailer home located on 92.5 acres that James had inherited. They shared the home and land with their child but separated in 2022. Kathryn sued James for divorce alleging habitual cruel and inhuman treatment and requested that the court grant her divorce and divide the marital assets. In October 2022, a sheriff's deputy served James with the divorce complaint, and the deputy's return was sent to Kathryn's lawyer. The deputy's signed return was not filed with the chancery court until March 2023, after the divorce hearing. No return of service was reflected on the docket until it was filed by Kathryn's lawyer. James did not timely respond to Kathryn's complaint. Kathryn obtained an order setting the matter for trial, but James never received this order. In February 2023, the court conducted a hearing on Kathryn's divorce complaint, which James did not attend. The chancery court granted the divorce, finding that James had committed domestic abuse against Kathryn, and granted her exclusive ownership, use, and possession of the 92.5-acre property. The judgment allowed James to keep the trailer that was located on the property, but he would need to have it removed. The court also signed a separate order divesting James of the 92.5-acre property. James later filed a motion to set aside the judgment, arguing that he had not been properly served, and he filed a counterclaim for divorce on the grounds of adultery and habitual cruel and inhuman treatment. Kathryn responded with a motion to dismiss James's motion to set aside the judgments. During the hearing on James's motion, his sister and nephew testified that no summons was attached to the complaint James had received from the sheriff's deputy. James himself testified that he did not know about the divorce until he went to the property and Kathryn told him that the judge had given her the house. The court ruled that James had not provided enough evidence to rebut the deputy's signed return of service and denied his motion to set aside the February 2023 judgment. James appealed.

ISSUES

Whether (1) James was properly served under Miss. R. Civ. P. 4, and (2) the chancery court erred by not setting aside the judgment of divorce and the equitable division of the parties' marital property.

HOLDING

(1) Because the testimony from three witnesses and documentary evidence of the complaint without a summons was sufficient to rebut the presumption of proper process, James was improperly served. (2) Because James was improperly served, the chancery court had no jurisdiction and erred in equitably dividing the parties' marital property. Therefore, the Court of Appeals reversed and remanded the judgment of the Lafayette County Chancery Court.

DISSENT

Presiding Judge Wilson argued that the chancery court did not err or abuse its authority in finding that James had failed to rebut the presumption of proper service of process. He contended that the chancery court was allowed to make decisions regarding witness credibility, and there was sufficient evidence to support the notion that proper service occurred. Therefore, he argued that the chancery court's decision should be affirmed.

Reversed & Remanded - 2023-CA-00674-COA (Sept. 10, 2024)

Opinion by Judge McDonald - Dissent by Presiding Judge Wilson

Hon. Robert Q. Whitwell (Lafayette County Chancery Court)

Edward Dudley Lancaster & Carnelia Pettis-Fondren for Appellant - Priscilla M. Grantham Adams & Christi R. McCoy for Appellee

Briefed by [Natori Weathersby](#)

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

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COURT OF APPEALS - CRIMINAL CASES

BELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - DUE PROCESS - DISQUALIFICATION - Due process demands the disqualification of a judge who formerly served as lawyer and participated in any way in the prosecution and conviction of a party

CRIMINAL PROCEDURE - DUE PROCESS - DISQUALIFICATION - Mississippi law demands an automatic reversal of a conviction if the trial judge fails to recuse and previously participated in an adverse role in that case; the same is true when a trial court judge improperly presides over revocation proceedings in which he is disqualified

FACTS

Randy Bell was charged with attempted murder in Amite County in September 2014, and the assistant district attorney at the time signed the indictment. In October 2016, Bell pled guilty to aggravated assault and was sentenced to twenty years. After five years of incarceration, Bell was eligible to serve his remaining time on post-release supervision (“PRS”). In November 2018, the assistant district attorney was elected as the circuit court judge for District 6, which included Amite County. In 2023, Bell was arrested for possession of a firearm by a felon and felony fleeing. The State moved to revoke Bell’s PRS, and the instant circuit judge signed the arrest warrant. In addition, the circuit judge presided over Bell’s revocation hearing, revoked the suspended portion of his sentence, and ordered him back into custody to serve the remainder. Through a motion of consideration, Bell contested the revocation. Bell further filed a motion to recuse, arguing that the circuit judge’s former role in his underlying conviction disqualified her from presiding over his revocation proceedings. The circuit court entered an order denying Bell’s motion for consideration. Bell appealed.

ISSUE

Whether the circuit judge was automatically disqualified from presiding over Bell’s revocation hearing because she previously prosecuted him in the case involving his underlying conviction.

HOLDING

Because the circuit judge actively participated in Bell’s prosecution as the assistant district attorney at the time, the circuit judge was automatically disqualified from the revocation proceedings and should have granted the motion to recuse. Therefore, the Court of Appeals vacated and remanded the judgment of the Amite County Circuit Court.

DISSENT

Chief Judge Barnes argued that an order revoking probation was not an appealable order. She argued that because the order from which Bell appealed was not a final judgment, the Court lacked jurisdiction. Therefore, the Court should have dismissed Bell’s appeal, allowing him to pursue a remedy under the Mississippi Uniform Post-Conviction Collateral Relief Act.

Vacated & Remanded - 2023-CA-00951-COA (Sept. 10, 2024)

Opinion by Judge McCarty - Dissent by Chief Judge Barnes

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

Thomas P. Welch Jr. for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Khytavia Fleming](#)

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

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