

MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 27, 2025**SUPREME COURT - CIVIL CASES****WEBSTER V. UNIV. OF MISS. MED. CTR. GRENADA****CIVIL - MEDICAL MALPRACTICE**

CIVIL PROCEDURE - SERVICE OF PROCESS - STATE INSTITUTIONS - Miss. R. Civ. P. 4(d)(5) provides that, for institutions of the state of Mississippi, service of process is required on the attorney general

CIVIL PROCEDURE - SERVICE OF PROCESS - TIME LIMIT FOR SERVICE - Miss. R. Civ. P. 4(h) provides that defendants must be served process within 120 days of the filing of a complaint

CIVIL PROCEDURE - SERVICE OF PROCESS - GOVERNMENT ENTITY - Miss. R. Civ. P. 4(d)(8) provides that service upon a governmental entity shall be made by delivering the summons and complaint to the person, officer, group or body responsible for the administration of that entity

MISS. TORT CLAIMS ACT - IMMUNITY - STATE EMPLOYEES - Miss. Code Ann. § 11-46-9(1)(c) provides that employees of governmental entities may not be held liable for acts or omissions occurring within the course and scope of their employment duties

FACTS

Dr. Aimee Watts performed a hysterectomy on Shanta Webster in April 2019 at the University of Mississippi Medical Center-Grenada (“UMMC-Grenada”). In August 2020, Webster filed a complaint against Watts, Dr. Kimberly Farmer, and Dodie McElmurry, the CEO of UMMC-Grenada, for medical negligence by Farmer during Webster’s post-operative care. Watts and Farmer answered the complaint in January 2021, claiming immunity under the Mississippi Tort Claims Act. A few days later, Webster noted that the answer filed on behalf of the doctors was not filed on behalf of UMMC-Grenada. The defendants informed Webster that proper service of process had not been followed as to UMMC-Grenada. The next day, Webster filed a motion for an extension of time to correct the service of process issue as to UMMC-Grenada, although she noted service of process was proper on the CEO. The defendants immediately filed a response, opposing the motion for an extension of time. The defendants also contended that service of process was required upon the Mississippi attorney general and that the 120-day time frame had expired. Webster then served UMMC-Grenada by service on the attorney general. In February 2021, Webster filed for an entry of default against UMMC-Grenada. The defendants’ counsel entered an appearance on behalf of UMMC-Grenada to contest in personam jurisdiction. The circuit clerk contacted Webster to inquire if the entry of default was premature because of the service of process issue at to UMMC-Grenada. Webster then filed a motion for default judgment. The defendants responded, again informing Webster of the service of process issue. In March 2021, Webster requested more time to identify additional authority in support of her argument that service of process was proper. Two days later, the defendants filed a motion to dismiss. Webster responded again that service of process was proper. After a February 2023 hearing, the trial court ruled that service of process as to McElmurry had been improper and granted the defendants’ motion to dismiss. Webster appealed.

ISSUES

Whether (1) service of process was proper as to UMMC; and (2) the individual defendants were immune from liability.

HOLDING

(1) Because UMMC-Grenada was UMMC operating as a satellite hospital in Grenada, and because UMMC was an institution of the state of Mississippi, Webster was required to serve process on the attorney general within 120 days.
(2) Because the individual defendants were acting within the scope of their employment as employees of UMMC-

Grenada, they were personally immune from liability. Therefore, the Supreme Court affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2023-CA-00687-SCT (Feb. 27, 2025)

Opinion by Justice Sullivan

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

Chynece Allen Bailey for Appellant - Robert J. Dambrino III & Wesley Clayton Pinson for Appellees

Briefed by [Margo Mabury](#)

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

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SUPREME COURT - CRIMINAL CASES

JONES V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF

PROOF - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

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

FACTS

In 2012, the victim's mother and children moved in with her high school sweetheart, Cayce Williams Jones. After the move, Jones sexually battered the victim and was indicted for one count of sexual battery and one count of fondling. At trial, Jones provided evidence that showed the victim's behavior belied the accusation itself. The State countered with evidence showing Jones's guilt via the victim's testimony and that of an expert in forensic interviewing. Jones was convicted on both counts. Jones's counsel did not file a post-trial motion for a new trial. Jones appealed.

ISSUE

Whether Jones received ineffective assistance of counsel because his trial counsel failed to file post-trial motions.

HOLDING

Because Jones failed to show his counsel's decision not to file a motion for a new trial prejudiced his defense, his ineffective-assistance-of-counsel claim failed. Therefore, the Supreme Court affirmed the judgment of the Monroe County Circuit Court.

DISSENT

Presiding Justice King argued that it was unclear from the record whether Jones's counsel had a duty to file post-trial motions. Therefore, Jones's conviction should be affirmed, but his right to raise an ineffective-assistance-of-counsel issue in a motion for post-conviction relief should be preserved.

Affirmed - 2023-KA-00876-SCT (Feb. 27, 2025)

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

Hon. Michael Paul Mills Jr. (Monroe County Circuit Court)

George T. Holmes & Zaria B. Chamberlain (Pub. Def. Office) for Appellant - Katy Taylor Sarver (Att'y Gen. Office) for Appellee

MINOR V. STATE

CRIMINAL - FELONY

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

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER COMMENTS - A prosecutor is prohibited from making both direct comments and those which could be reasonably construed by a jury as a comment on the defendant's failure to testify, and once such improper comments are made, the defendant is entitled to a mistrial regardless of the overwhelming weight of the evidence

CRIMINAL PROCEDURE - CONFRONTATION CLAUSE - CROSS-EXAMINATION - The right of confrontation extends to and includes the right to fully cross-examine a witness against the defendant on every material point relating to the issue to be determined that would have a bearing on the credibility of the witness and the weight and worth of his testimony

CRIMINAL PROCEDURE - CLOSING ARGUMENTS - PRESERVING OBJECTION - To preserve an objection to alleged improper remarks by counsel during closing argument, the complaining party must not only make a contemporaneous and specific objection to the remarks but must also obtain a definitive ruling from the trial court on his objection and must request corrective action

FACTS

Mississippi Bureau of Narcotics ("MBN") Agents Jerry Stewart and Martez Simpson awaited the delivery of a package to a residence in Natchez. The U.S. Postal Service ("USPS") had notified MBN that it suspected the package contained marijuana and Tetrahydrocannabinol ("THC") edibles, so the agents elected to stake out the package's delivery address and await the package's recipient. Mario Hartwell arrived in a truck and picked up the package upon delivery. The agents approached Hartwell and identified themselves. Hartwell dropped the package and fled. During this time, Zachary Minor sat in the truck. Stewart testified that he saw the USPS tracking information on Minor's phone and that the package's label contained only one word, "Minor." Simpson testified that he observed a text message on Minor's phone referencing "a gram" and obtained a photograph of the message which was later entered into evidence. Following the obtaining of a search warrant, the contents of the package revealed to contain marijuana and THC edibles. A grand jury indicted Minor and Hartwell jointly, and Minor subsequently filed a motion to sever which was later granted. During the jury trial, the State commented on Minor's not wanting to speak to the agents, questioned Stewart about his experience with children mistaking drugs for candy, asked about an out-of-court statement made by Hartwell, referenced inadmissible hearsay previously ruled on by the circuit court, and argued that because Hartwell was criminally liable for what Minor did, Minor was liable as well. Minor moved for a mistrial, and the circuit court denied it. Minor then moved for a directed verdict on all counts. The circuit court granted his motion as to counts one and two for conspiracy to possess marijuana and conspiracy to traffic THC but denied it as to counts three and four for possession of marijuana with intent to distribute and trafficking THC. The jury ultimately found Minor guilty of counts three and four. Minor subsequently filed a motion for a new trial. The circuit court denied his motion. Minor appealed, and the Court of Appeals held Minor waived the inadmissible hearsay issue by failing to contemporaneously object, by failing to argue against the hearsay on Confrontation Clause grounds until the motion for mistrial, and by failing to appeal the denial of his motion for mistrial. The Court of Appeals also found no reversible error based on the State's conduct because Minor failed to object to the State's comments and because the trial court sustained Minor's objection to the testimony on edibles. Minor filed a motion for rehearing, which the Court of Appeals denied. Minor petitioned for writ of certiorari.

ISSUES

Whether (1) any of several alleged errors were reversible, and (2) such errors combined to constitute cumulative error and thus deprived Minor of a fair trial.

HOLDING

(1) Because Minor’s procedural errors barred each alleged error from appellate review, no error in-and-of-itself was reversible. (2) Because the State commented on Minor’s right to remain silent, elicited inflammatory testimony regarding the effect of edibles on children with no evidentiary basis for doing so, elicited an out-of-court statement made by Hartwell whom Minor did not have the opportunity to cross-examine, cited such out-of-court statement as proof of Minor’s guilt in its closing argument, and improperly implied the guilt of Minor due to the guilt of Hartwell, the cumulative-error doctrine applied to restore Minor’s right to a fair trial. Therefore, the Supreme Court reversed and remanded the judgment of the Adams County Circuit Court.

DISSENT

Justice Griffis argued that every assignment of error raised by Minor on appeal was procedurally barred and, even when considered collectively, the cumulative effect of all alleged errors did not deprive Minor of a fundamentally fair trial. Further, Justice Griffis argued that Minor did not prove that any abuses by the State were part of a tactical gameplan to influence the jury outside the evidence presented. Therefore, he would affirm the judgments of the Court of Appeals and the trial court and uphold Minor’s convictions and sentences.

Reversed & Remanded - 2022-CT-00990-SCT (Feb. 27, 2025)

En Banc Opinion by Justice Ishee - Dissent by Justice Griffis

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

George T. Holmes & W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Taylor Dorenkott](#)

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

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MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 25, 2025

COURT OF APPEALS - CIVIL CASES

BLACK V. BLACK

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - APPEALS - TIMELINESS - A notice of appeal must be filed within thirty days after the date of entry of the judgment or order appealed from

CIVIL PROCEDURE - APPEALS - TOLLING - A motion for relief under Miss. R. Civ. P. 60(b) should be filed within ten days of the judgment in order to toll the time to appeal; a Rule 60(b) motion filed after ten days from the judgment is considered “untimely” for the purpose of tolling the time to appeal the underlying judgment

CIVIL PROCEDURE - APPEALS - RELIEF - Miss. R. Civ. P. 60(b) motions should be denied where they are merely an attempt to relitigate the case and cannot be used as an escape hatch for litigants who had procedural opportunities afforded under other rules and who, without cause, failed to pursue those procedural remedies

FACTS

Alicia and Arthur Black were divorced in 2014, and the court awarded Alicia custody of their two minor children and ordered Arthur to pay child support. In February 2023, Arthur filed a complaint for modification, alleging substantial and material changes in circumstances. In April 2023, Arthur issued a summons setting a hearing for trial and attempted to serve Alicia by certified mail twice. However, the certified mail receipt showed that the envelope was refused. The clerk documented the filing as unexecuted. In June 2023, Alicia filed a pro se motion to dismiss Arthur’s complaint, claiming that the court lacked personal jurisdiction over the matter since she and her children no longer lived in the

state. The court conducted a hearing on the modification, but Alicia was not present. On June 28, 2023, the court entered a judgment of modification and contempt against Alicia, finding that Alicia refused service. On July 28, 2023, Alicia filed a motion for relief from the judgment under Miss. R. Civ. P. 60(b), arguing that she was not properly served. The chancery court held a hearing on August 25, 2023 on Alicia’s motion at which both parties appeared. At the hearing, Arthur showed proof of multiple attempts to serve Alicia. As a result, the court denied Alicia’s motion for relief on September 5, 2023. Alicia appealed.

ISSUES

Whether (1) Alicia’s appeal of the chancery court’s judgment was timely, and (2) the chancery court erred in denying Alicia’s Rule 60(b) motion.

HOLDING

(1) Because Alicia did not appeal the chancery court’s judgment on the modification within thirty days, Alicia’s appeal was untimely, and the Court of Appeals lacked jurisdiction. (2) Because Alicia had other procedural options available to challenge insufficiency of process but did not pursue them, the chancery court did not abuse its discretion by denying Alicia’s Miss. R. Civ. P. 60(b) motion. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

Affirmed - 2023-CA-01098-COA (Feb. 25, 2025)

Opinion by Judge McDonald

Hon. Mark Anthony Maples (Jackson County Chancery Court)

Paulette McLeod Turner for Appellant - Dean Holleman for Appellee

Briefed by [Natori Weathersby](#)

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

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COLBERT V. COLBERT

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - FAILURE TO RAISE A CLAIM - PROCEDURAL BAR - Issues raised for the first time on appeal are procedurally barred from review as they have not first been addressed by the trial court; a trial court will not be found in error on appeal for a matter not presented to it for discussion

FAMILY LAW - CHILD SUPPORT - CHILD SUPPORT GUIDELINES - Pursuant to the child support guidelines provided in Miss. Code Ann. § 43-19-101 a parent required to pay child support for two children is assessed a payment of 20% of his or her monthly adjusted gross income; if a parent has an adjusted gross income of more than \$100,000 a year, the court shall make a written finding in the record as to whether or not the application of the guidelines established is reasonable; without an express finding of fact as to the payor’s income, it cannot be said that the child-support guidelines were either followed or not followed

JUDICIAL RECORD - SEALED RECORD - BALANCING TEST - A court may, within its discretion, determine that court filings or information contained should be declared confidential or privileged and sealed from public disclosure; before sealing an entire case, a trial court should first balance claimed private interest in confidentiality against the public interest in open courts

FACTS

Prior to their marriage, Ming Colbert (“Ming”) and Thomas Colbert (“Tom”) entered into a prenuptial agreement (“prenup”). The prenup stated that, “although Tom and Ming are entering into their contemplated marriage with every intention to remain married for as long as each shall live, both recognize that such marriage may not be as successful as both hope, and that a divorce, annulment, separate maintenance proceeding, or other legal proceeding to dissolve the marriage between Tom and Ming could occur.” Further, the prenup provided that, “[T]he parties do hereby agree in the event of any such legal proceeding involving a divorce, annulment, separate maintenance or similar proceeding, Tom

shall not be entitled to any greater rights with regard to the income or assets of Ming than Tom would have in the event of the death of Ming and Ming shall not be entitled to any greater rights with regard to the income or assets of Tom than is provided for in Paragraph 9 below.” In 2015, Tom filed for divorce, but the couple eventually reconciled. However, during the divorce case’s pendency, Ming sought to have their prenup declared invalid. Ming’s motion was still pending when the divorce was dismissed in 2017. In 2021, Ming petitioned for separate maintenance from Tom, alleging that he had physically abandoned and separated himself from the marriage. Instead of asking for a divorce, Ming requested that the trial court command Tom to return to the marital relationship and provide support and maintenance to Ming and their minor children. Tom responded, arguing that their prenup governed any request for separate maintenance. However, he did not allege the agreement barred separate maintenance in general, instead only affirmatively asserting that the agreement be applied and enforced in the matter. He also filed a counterclaim, demanding a divorce from Ming on the basis of cruel and inhuman treatment and because her actions led to the proximate cause of their separation. Tom filed a motion seeking a declaratory judgment that the prenup was valid, enforceable, and effective. Ming filed a motion to declare the prenup null, void, and unenforceable. The trial court conducted a multi-day hearing regarding the validity of the prenup, during which it heard from several witnesses. The trial court subsequently declared the prenup valid. At no point in this hearing or at the conclusion of presenting evidence did counsel for Tom argue that the prenup barred separate maintenance or that the proceedings should be stopped immediately. The trial court proceeded to hear evidence regarding Ming’s claim for separate maintenance. After testimony, counsel for Tom informed the trial court that they would like to present a motion to dismiss, during which he did not argue that the prenup barred separate maintenance. The trial court denied Tom’s motion to dismiss and granted Ming’s request for separate maintenance. The trial court informed Ming’s counsel that he did not need to call a witness to testify as to child support, ordering Tom to pay \$7,000 in separate maintenance, which combined spousal support and child support. The trial court did not distinguish how the amount was calculated, what the actual amount of child support was, what Tom’s adjusted gross income was, and did not explain any deviations from the guidelines. The trial court also sealed the entire file, an act which was not contested by either party. Tom appealed and Ming cross-appealed.

ISSUES

Whether (1) the prenup barred separate maintenance; (2) the child support award was supported by sufficient findings; and (3) the sealing of the record was in accord with precedent.

HOLDING

(1) Because Tom failed to present his argument that the prenup barred separate maintenance to the trial court, the argument was procedurally barred. (2) Because the amount of child support awarded did not follow longstanding requirements as to the calculation of income and deviation from statutory guidelines, the award was not supported by sufficient findings. (3) Because the trial court sealed the entire file without first balancing the asserted private interest in confidentiality against the public interest in open courts and transparent judicial proceedings, the sealing did not conform to precedent. Therefore, the Court of Appeals affirmed in part and reversed in part the judgment of the Rankin County Chancery Court.

On Direct Appeal: Affirmed in Part; Reversed & Remanded in Part. On Cross-Appeal: Affirmed in Part; Reversed & Remanded in Part - 2022-CA-01293-COA (Feb. 25, 2025)

En Banc Opinion by Judge McCarty

Hon. John C. McLaurin Jr. (Rankin County Chancery Court)

Jennifer Leigh Boydston for Appellant - John S. Grant IV for Appellee

Briefed by [Anne Marie Lundy](#)

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

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FAIRCHILD V. KS OCEAN SPRINGS REAL ESTATE LLC

CIVIL - PERSONAL INJURY

TORTS - PERSONAL INJURY - PREMISES LIABILITY - To succeed on a premises liability claim, the plaintiff is required to show: (1) a negligent act by the defendant caused the plaintiff's injury; or, (2) the defendant had actual knowledge of a dangerous condition, but failed to warn the plaintiff of the danger; or, (3) the dangerous condition remained long enough to impute constructive knowledge to the defendant

CIVIL PROCEDURE - DISCOVERY - FAILURE TO OBEY ORDER TO PROVIDE OR PERMIT DISCOVERY - Miss. R. Civ. P. 37(b)(2)(A) provides that, if a party or a person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: (i) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence; (ii) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party

CIVIL PROCEDURE - DISCOVERY - TRIAL COURT'S DISCRETION - Trial courts have considerable discretion in discovery matters; trial court decisions in discovery matters will not be overturned unless there is an abuse of discretion

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admission on file, together with the affidavits, show that there is no genuine issue as to any material fact; the evidence must be viewed in the light most favorable to the non-moving party

FACTS

On October 14, 2019, John Fairchild fell at the entrance of a combined gas station, owned by KS Ocean Springs Real Estate LLC and Keith's Superstore 89 LLC ("Keith's"), and a McDonald's, owned by Three R's LLC ("Three R's"). Fairchild contended that he was meeting a friend, Jeff Conyers, when he slipped on a discarded hamburger in the parking lot. Anita Pintor, a Keith's employee, saw Fairchild fall, assisted him, and prepared a Customer Incident Report. Instead of completing his portion of the incident report when asked by Pintor, Fairchild returned the next day to detail his version of the incident in the report. Fairchild filed suit against Keith's and Masker Management LLC, who substituted Three R's by agreed order. During discovery, Fairchild claimed that he suffered injuries when he fell on a "slippery discarded hamburger." Fairchild later provided in interrogatory answers only one photo of a piece of a hamburger bun next to a McDonald's receipt dated October 13, 2019, the day before Fairchild's fall. Additionally, the photo's metadata indicated that the photo was taken on October 15, 2019, the day after Fairchild's fall. Fairchild also answered no to being convicted of or pleading guilty to any crimes. Furthermore, Fairchild identified Conyers as a witness during discovery but stated that Conyers had no fixed address. Three R's filed a motion for summary judgment, and Keith's followed suit. Fairchild's new counsel presented Keith's and Three R's with Conyers's affidavit, stating that he lived in Van Cleave, Mississippi and identified Fairchild's fall on October 13, 2019. Keith's and Three R's subsequently deposed Conyers. Conyers noted that he informed the cashier about the hamburger prior to Fairchild's fall. Fairchild then responded to Keith's and Three R's motion for summary judgment, attaching Conyers's affidavit and deposition excerpts, stating that Fairchild gave Conyers his order receipt and asked Conyers to take a picture of the hamburger. Fairchild and Conyers had different reasons for the receipt's inclusion in the hamburger's photo, and Conyers's description of the hamburger contradicted Fairchild's description. Three R's replied to Fairchild's response, pointing out that Fairchild lied about his criminal history during interrogatories. Three R's further argued that Fairchild, who claimed he was too ill to be deposed, flew from Texas to Mississippi to meet Conyers before Conyers's deposition. Fairchild also disclosed Conyers as a witness after Three R's motions for summary judgment. Keith's filed a reply to Fairchild's response, stating similar arguments to Three R's and that Fairchild lied about Conyers not having a phone or transportation. Keith's urged the trial court not to consider Conyers's affidavit and deposition testimony because Fairchild had violated basic discovery rules. After several motions and responses from Fairchild, Keith's, and Three R's, the court heard arguments from parties on the motions for summary judgment. Three R's argued the varying discrepancies in Fairchild's and Conyers's statements and information surrounding his fall and Fairchild's bad faith participation in discovery. The trial court entered an order striking Conyers's testimony and granting summary judgment in favor of Keith's and Three R's. Fairchild appealed.

ISSUES

Whether the trial court erred (1) in striking Conyers’s affidavit and (2) in granting summary judgment.

HOLDING

(1) Because the objective evidence in the record contradicted Conyers’s testimony, because the photograph’s undisputed metadata showed that Conyers took the photo the day after the fall, and because of Fairchild’s deceptive behavior and evasive answers to discovery, the trial court did not err nor abuse its discretion in striking Conyers’s affidavit. (2) Because the trial court did not err in striking Conyers’s testimony, because Fairchild presented no other proof of a dangerous condition or notice, and because Fairchild failed to submit the requisite “significant probative evidence” to show that a genuine issue of material fact existed with respect to his claims against Three R’s and Keith’s, the trial court did not err in granting summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2023-CA-00928-COA (Feb. 25, 2025)

Opinion by Judge McDonald

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Philip Carey Hearn & Charles Cassidy Cole for Appellant - Robert P. Thompson, Eric Reynolds Price, & Mackenzie Nicole Ellis for Appellees

Briefed by [Khytavia Fleming](#)

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

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MONTGOMERY V. WHATLEY

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - CONCURRENT ESTATES - TENANCY IN COMMON - A tenancy in common occurs when two or more persons, in equal or unequal undivided shares, have an equal right to possess the property

WILLS & ESTATES - PROBATE - LACK OF PRESENTATION - Where a will is not presented for probate, property must be handled as though the testator had died intestate

FACTS

Bernice Montgomery-Johnson (“Bernice”) died testate in October 2001. In March 2002, Zelpha Montgomery-Whatley (“Zelpha”) filed a petition to admit Bernice’s Last Will and Testament to probate, and it was filed in December 2002. Two days later, an Order Admitting Will to Probate and Granting Letters Testamentary was entered, and Zelpha was appointed as the executrix of Bernice’s estate. In June 2007, a chancery court order determined that Bernice had ten heirs-at-law, with one having died since that date. Fifteen years later, in June 2022, Zelpha filed a motion seeking authorization to convey Alroy Montgomery (“Alroy”) his portion of the estate’s real property. The unsworn motion stated that the estate was the fee simple owner of 120 acres, sixty acres of which were considered Bernice’s home place. The motion proposed that Alroy receive six acres of Bernice’s home place as he wanted to build a home on the property but had to own it to obtain a loan. In exchange for the six acres, Alroy would release the estate from all other claims that he might be entitled to as an heir. A hearing on the motion was set for August 2022. However, in July 2022, Wilhelmina Montgomery (“Wilhelmina”) sent a letter to the trial court complaining that she signed a joinder in the aforementioned motion under pressure. She wrote that she had poor eyesight and did not realize the joinder did not name the heir who was to be deeded the property and did not describe the property to be conveyed. Moreover, she argued that there was no notary present to witness her signature. Finally, she asked that the trial court void her purported joinder to the motion. A few days later, the remaining living heirs filed joinders to Zelpha’s motion to permit disbursement of the property. At the August 2022 hearing, no sworn testimony or affidavits were presented, and no physical evidence was produced. Zelpha’s counsel explained that the purpose of the hearing was to determine the estate’s power to deed Alroy the six acres that he requested. When asked to voice her objection to the distribution to Alroy, Wilhelmina reiterated the arguments presented in her previous letter to the trial court. Additionally, she argued that the heirs had a first cousin that inherited an interest in the 120 acres from her father, and that the estate owned only forty

acres. After Zelpha's counsel responded to each grievance, the trial court found that at her death, Bernice was the fee simple owner of the land to be conveyed, and the court permitted the property to be deeded to Alroy. Two days after the chancery court's ruling, an executrix's deed was recorded conveying the property to Alroy. Notably, the trial court's findings were made without knowing that Hallie Patton, the mother of Bernice and Margaret Patton, had executed a will in 1974 where she bequeathed the 120 acres at issue to Bernice and Patton to share and share alike. Wilhelmina appealed.

ISSUE

Whether the trial court erred in finding that Bernice was the fee simple owner of the estate and that six acres of the property could legally be conveyed to Alroy.

HOLDING

Because there was no deraignment of title in the record for the 120 acres at issue, and because the evidence suggested that Bernice and Margaret each had an undivided one-half interest in the entire 120 acre tract of land, the trial court erred in finding that Bernice was the fee simple owner of the estate and that six acres of the property could legally be conveyed to Alroy. Therefore, the Court of Appeals reversed and remanded the judgment of the Holmes County Chancery Court.

Reversed & Remanded - 2022-CP-00992-COA (Feb. 25, 2025)

Opinion by Judge Emfinger

Hon. Robert George Clark III (Holmes County Chancery Court)

Pro se for Appellant - John Doyle Moore for Appellee

Briefed by [Douglas "Trey" Hubner III](#)

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

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ROBERTS V. ROBERTS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVISION OF MARITAL PROPERTY - DOUBLE AWARD - To count one party's reputation and ability to earn income both as an asset in the division of marital property and as a continuing stream of income for purposes of alimony is an inequitable and improper double award to the other party

FAMILY LAW - DIVISION OF MARITAL PROPERTY - VALUATION OF ASSETS - Goodwill, whether personal goodwill or business enterprise goodwill, should not be included in the valuation of a business for purposes of equitable division of marital property

FAMILY LAW - DIVISION OF MARITAL PROPERTY - ALIMONY - Alimony is considered only after the marital property has been equitably divided and the chancellor determines one spouse has suffered a deficit; where a court's division of marital property is reversed, the Court must also reverse any accompanying award or denial of alimony

FACTS

Ramona ("Mona") and Jason Roberts consented to an irreconcilable differences divorce in 2023 and agreed on all issues related to child custody, visitation, and support. The case proceeded to a trial at which the chancery court was to equitably divide the marital estate and determine whether Jason should pay Mona alimony and, if so, the type and amount. Jason owned his own real estate appraising business that he started during the marriage. Jason testified that he ran his business alone and had no assets aside from a desktop computer. The chancery court concluded that the value of Jason's business was equal to the value of Jason's average annual income. The judgment also awarded each party \$25,000 from a savings account which the court valued at \$50,000. Jason was awarded his guns and bows which the court valued at \$12,000 based on the value assigned to them in Mona's financial statement. At trial, Mona testified that the weapon valuation figure was mistyped and that the guns and bows should have been valued at \$1,200, but the court valued the guns at \$12,000 in the final judgment. Next, the chancery court valued Jason's trailers at \$7,400 by adopting

the value Mona assigned to them. Mona agreed that the value she assigned to them included an inadvertent duplication. The court noted that the judgment distributed 47% of the net value of the marital estate to Mona and 53% to Jason. The court also stated that Mona was left with a deficit because Jason received a greater share of the marital assets and because his earning capacity greatly exceeded Mona's. Based on those calculations, the court awarded Mona periodic alimony of \$1,000 per month until the parties' minor child became emancipated and periodic alimony of \$2,500 per month thereafter. Jason filed a motion for reconsideration and to alter or amend the judgment. Jason argued that the court's valuation of his business was contrary to the law and evidence and that the court erred in assigning values to certain other marital assets. Jason also argued that the chancery court erred in awarding Mona permanent periodic alimony and by providing for a future increase in alimony upon their child's emancipation. The court denied Jason's motion. Jason appealed.

ISSUES

Whether the chancery court erred in (1) evaluating Jason's real estate appraisal business; (2) evaluating Jason's other assets in the equitable division of the marital estate; and (3) awarding Mona permanent periodic alimony and by providing for a future increase in alimony upon their child's emancipation.

HOLDING

(1) Because the purported value of Jason's business was a significant part of the value of the marital assets awarded to Jason and presumably impacted the overall equitable division of the marital estate, and because there was no evidence in the record that Jason's business had any value beyond goodwill and a desktop computer, the chancery court erred in its evaluation of Jason's business. (2) Because there was no basis for a non-existent savings account's inclusion in the equitable division of the marital estate, because the mistyped error increased the value of the guns and bows awarded to Jason, and because the chancery court adopted Mona's duplicated valuations of Jason's trailers and tractor, the chancery court erred in evaluating Jason's other assets in the equitable division of the marital estate. (3) Because it was necessary to reverse the equitable division of the marital estate, it was also appropriate to reverse and remand the related award of alimony. Therefore, the Court of Appeals reversed and remanded the judgment of the Lee County Chancery Court.

Reversed & Remanded - 2023-CA-00934-COA (Feb. 25, 2025)

En Banc Opinion by Presiding Judge Wilson

Hon. Kenneth M. Burns (Lee County Chancery Court)

Kayla Fowler Ware & T. Swayze Alford for Appellant - John A. Ferrell for Appellee

Briefed by [Lauren Bowlin](#)

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

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SPIVEY V. SPIVEY

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - CUSTODY MODIFICATION - The parent seeking custody modification must show: (1) a material change in circumstances occurred since the issuance of the decree sought to be modified; (2) that the material change adversely affected the minor child; and (3) that it would be in the child's best interest for custody to change

FAMILY LAW - CUSTODY MODIFICATION - CHANCERY COURT REQUIREMENTS - In order to modify a custody judgment, the chancery court must (1) examine the totality of the circumstances in determining whether a material change in circumstances occurred; (2) if a material change occurred, make a separate assessment to determine if the change is adverse to the child; and (3) make on-the-record findings for each *Albright* factor when analyzing the child's best interest

FACTS

Carly Spivey and Jason Spivey, a previously married couple, had a daughter, AS. When the couple divorced based on irreconcilable differences, the agreed judgment included Carly and Jason having joint physical and legal custody of AS. Seven years later, Jason filed for modification of custody and requested physical custody be awarded to him due to a substantial change that was adverse to AS's best interest. He further alleged that AS, thirteen at the time, joined his complaint and wanted to live with him. A hearing was later conducted where both parents testified. The trial court entered an order modifying custody of AS to Jason for legal and physical custody. The trial court did not identify any specific material changes warranting a modification of the existing custody agreement. There was no separate assessment as to whether the change was adverse to AS's welfare. The trial court made no on-the-record findings as to each individual *Albright* factor. Carly appealed.

ISSUES

Whether the trial court erred in modifying a prior judgment of custody (1) without showing that a material and substantial change in circumstances had occurred since the original custody entry and that any such change had an adverse impact on the child; (2) based solely on the affidavit of a thirteen-year-old child; and (3) without consideration of the *Albright* factors.

HOLDING

(1) Because the trial court did not identify on the record what was a material change that warranted modifying the existing custody agreement, and because it made no separate assessment that the change was adverse to AS's welfare, the trial court erred in modifying the custody judgment. (2) Because the trial court issued a half page custody judgment and failed to specifically identify on the record why the prior judgment was modified, the trial court erred in modifying the custody judgment. (3) Because the trial court made no on-the-record findings as to each individual *Albright* factor, the trial court erred in modifying the custody judgment. Therefore, the Court of Appeals reversed and remanded the judgment of the Jackson County Chancery Court.

Reversed & Remanded - 2023-CA-01002-COA (Feb. 25, 2025)

Opinion by Judge Emfinger

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

G. Charles Bordis IV for Appellant - Mark V. Knighten for Appellee

Briefed by [Natalie Xan](#)

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

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COURT OF APPEALS - POST-CONVICTION RELIEF

CRUMP V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - POST-CONVICTION RELIEF - TIMELINESS - A motion for post-conviction relief must be filed within three years of the judgment of conviction following a guilty plea

CIVIL PROCEDURE - POST-CONVICTION RELIEF - SUCCESSIVE MOTIONS - Under Miss. Code Ann. § 99-39-23(6), any order dismissing or denying a petitioner's motion for post-conviction relief is a final judgment and shall be conclusive until reversed

CIVIL PROCEDURE - PREVIOUS LITIGATION - RES JUDICATA - Res judicata prevents the litigation of claims that were made or should have been made during previous litigation

FACTS

In 2016, Malcolm Crump pled guilty to three separate charges of selling a controlled substance. He was sentenced as a subsequent and habitual offender to serve fifty-six years without eligibility for parole. In 2017, Crump filed his first

motion for post-conviction relief, which was denied. That decision was subsequently upheld by the Court of Appeals. In 2022, Crump sought a writ of habeas corpus, which the trial court considered his second motion for post-conviction relief and denied. In 2023, Crump filed a motion for “Review or Challenge of Criminal Offender.” The trial court issued an order finding that although Crump sought to have the habitual offender portion of his sentence vacated, his motion was actually one requesting post-conviction relief. The trial court denied Crump’s motion on the basis that it was barred by the statute of limitations, as a subsequent motion, and by the doctrine of res judicata. Crump appealed.

ISSUES

Whether the trial court erred by dismissing Crump’s motion for post-conviction relief for being barred (1) as untimely, (2) as a successive motion, and (3) by the doctrine of res judicata.

HOLDING

(1) Because the instant post-conviction relief motion was not filed until approximately seven years after the judgment of conviction, Crump’s motion was barred for being untimely. (2) Because the trial court previously denied two post-conviction relief motions by Crump, Crump’s third motion was barred as successive. (3) Because Crump had unsuccessfully argued the issue of his motion previously before the trial court and Court of Appeals, Crump’s motion was barred under the doctrine of res judicata. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2023-CP-00795-COA (Feb. 25, 2025)

Opinion by Judge Lawrence

Hon. Joseph H. Loper Jr. (Grenada County Circuit Court)

Pro se for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Connor Dixon](#)

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

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COURT OF APPEALS - CRIMINAL CASES

STAR V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - POSSESSION OF A WEAPON BY A FELON - KNIFE-SPECIFIC REQUIREMENTS

- To sustain a conviction for possession of a weapon by a felon, the indictment must specify the type of knife possessed when the alleged weapon is a knife, which is an essential element of the crime; the mere possession of a knife is not a crime pursuant to Miss. Code. Ann. §97-37-5 as the statute is limited to only four specifically named types of knives: a bowie knife, dirk knife, butcher knife, and switchblade knife

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LEGAL SUFFICIENCY - Jury instructions must include all essential elements of the charged crime; no reversible error exists if the instructions fairly, though not perfectly, state the law and create no injustice

FACTS

In August 2022, David Lee Star and his girlfriend, Sara Latham, were drinking whiskey at Veterans Memorial Park in Hattiesburg. When Latham attempted to end their relationship, Star asked for a final hug. During the embrace, Star stabbed Latham multiple times in the head and arm. Star began threatening to kill Latham, who fled into the street to flag down a car for help. A passing motorist called 911, and the fire department arrived first and started to treat Latham. Law enforcement arrived and identified the crime scene, and Latham was treated at a hospital for serious stab wounds. She said that she did not see what Star stabbed her with because it was dark. Star was arrested the following day and waived his *Miranda* rights. Star initially denied seeing Latham but later admitted to stabbing her, and he claimed self-

defense. Star stated that Latham slapped him and sprayed him with pepper spray, and he said that he pulled out a knife because he thought Latham had a box cutter. Star knew he had injured Latham, but he left the park and discarded the knife, which was never recovered. In February 2023, Star was indicted for aggravated assault, possession of a weapon by a felon, and tampering with evidence. Because he had previously been convicted of two felonies, he was also charged as a habitual offender. At trial, the State called the responding police officer who testified that Latham was covered in blood but unable to tell him what happened. Body-camera footage and photographs of Latham's injuries were admitted into evidence. Latham also testified and denied hitting Star, spraying him with pepper spray, or using a box cutter on him. The State also called the detective who questioned Star upon his arrest. She said that Star kept changing his story and that photos of Star's body showed no cuts or bruises. The detective testified that Star ended up admitting that Latham never came at him in a threatening way and that she thought he was being deceptive based on her eleven years of training and experience. The jury found Star guilty on all three counts. The trial court sentenced Star to twenty years in the custody of the Miss. Department of Corrections, with ten years suspended, and five years of post-release supervision for aggravated assault. Additionally, the court sentenced him to concurrently serve ten years for possession of a weapon by a felon. In July 2023, Star filed a motion for judgment notwithstanding the verdict and stated that the State failed to make a prima facie case of possession of a weapon by a felon because the State failed to identify the weapon, as required by the statute. A few days later, he filed an amended motion, repeating almost verbatim the allegations of his original motion. The circuit court denied both motions. Star appealed.

ISSUES

Whether (1) Star's conviction of possession of a weapon by a felon should be reversed; and (2) the jury instruction on aggravated assault was deficient and did not include essential elements of the crime.

HOLDING

(1) Because the indictment failed to specify the type of knife Star allegedly possessed which constituted failure to prove an essential element of the statute, Star's conviction of possession of a weapon by a felon was reversed.
(2) Because the jury instructions as a whole fairly stated the law regarding aggravated assault, and because the evidence demonstrated that the knife was used as a deadly weapon, the jury instruction on aggravated assault was not deficient and did include essential elements of the crime. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Forrest County Circuit Court.

Affirmed in Part; Reversed & Rendered in Part - 2023-KA-00788-COA (Feb. 25, 2025)

En Banc Opinion by Judge McDonald

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Andrew Moyer](#)

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

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