

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2024-IA-00038-SCT

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

v.

CORLEXIA CARTER

DATE OF JUDGMENT:	12/20/2023
TRIAL JUDGE:	HON. WINSTON L. KIDD
TRIAL COURT ATTORNEYS:	ANN RUSSELL CHANDLER JOSEPH E. ROBERTS, JR. JOHN MICHAEL COLEMAN JACOB O. MALATESTA CLAIRE K. ROBINETT CHRISTOPHER ALLEN HERRIN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	JACOB O. MALATESTA CHRISTOPHER ALLEN HERRIN
ATTORNEYS FOR APPELLEE:	JOSEPH E. ROBERTS, JR. ANN RUSSELL CHANDLER T. MARK SLEDGE
NATURE OF THE CASE:	CIVIL - MEDICAL MALPRACTICE
DISPOSITION:	REVERSED AND RENDERED - 08/06/2026
MOTION FOR REHEARING FILED:	

EN BANC.

BRANNING, JUSTICE, FOR THE COURT:

¶1. After Corlexia Carter filed a medical-negligence action against the University of Mississippi Medical Center (UMMC), UMMC followed with a motion for summary judgment alleging Carter's claims were time barred. The trial court denied the motion, and this Court granted UMMC's interlocutory appeal. After a thorough review of the record and applicable law, we reverse and render judgment in favor of UMMC.

FACTS AND PROCEDURAL HISTORY

¶2. On December 4, 2017, Carter sought treatment at UMMC's emergency department for blurred vision and headaches. She was diagnosed with idiopathic intracranial hypertension (IIH) and was admitted for an ophthalmology consult. After various tests, Dr. Lee Jones ordered intravenous steroids to be administered and then discharged Carter with oral medications. Carter returned to UMMC on December 15, 2017, for an ophthalmology clinic visit with Dr. David Kirkpatrick and Dr. Albert Lin. The follow-up exam revealed that her vision had slightly improved; however, even though the UMMC medical team recommended surgery, Carter elected to pursue medicinal options only at that time.

¶3. On December 18, 2017, Carter returned to UMMC for a follow-up visit. Dr. Kyle Lewis recommended that Carter undergo surgery in the form of an optic-nerve sheath fenestration (ONSF) procedure. Carter agreed to undergo surgery, which Dr. Lewis performed on December 19, 2017. Carter was scheduled to see Dr. Lewis for a follow up on January 3, 2018; however, Carter arrived late for the appointment and eventually left the appointment without being seen that day.

¶4. On January 17, 2018, Carter was seen by UMMC neurologist Dr. Rajesh Sharma, who determined that Carter's vision had, in fact, declined. Dr. Sharma admitted Carter to UMMC and performed a lumbar peritoneal shunt placement the following day. In the days following the procedure, Carter and her mother, Coretta Terrell, had conversations about the care she had been receiving at UMMC. The record reflects that Terrell expressed to Carter that

“maybe you need to see somebody else.” Carter responded by stating, “yes, Mama, yes . . . there’s something done wrong. I need to see somebody else because there’s something wrong.” Carter stated she felt as if she was not receiving proper care “because I just feel like my sight was just leaving. Like I shouldn’t have lost my sight if they’d done what there were supposed to.” She continued her post-operation follow-up visits at UMMC on February 1, 5, 7, and March 26, 2018. Then, on May 23, 2018, Carter saw Dr. Danett Dillon, a neurologist with Saint Dominic Hospital, who stated, “what was done at UMMC was not correct” and later provided an alternative diagnosis of fulminant (malignant) idiopathic intracranial hypertension (FIIH).

¶5. On May 9, 2019, UMMC received Carter’s notice of claim, and on November 5, 2019, Carter filed suit for medical negligence. UMMC filed its motion for summary judgment alleging that Carter’s claims were time barred pursuant to the Mississippi Tort Claims Act, Mississippi Code Section 11-46-1 to -23 (Rev. 2019), alleging that she first discovered the claims on May 23, 2018, the same day of her visit with Dr. Danett Dillon. UMMC asserts, however, that Carter had been aware of her claims for more than a year before the notice of claim. The trial court denied UMMC’s motion for summary judgment, and this interlocutory appeal timely followed.

STANDARD OF REVIEW

¶6. This Court reviews “a trial court’s grant or denial of a motion for summary judgment *de novo*.” *Jones v. Alcorn State Univ.*, 337 So. 3d 1062, 1066 (Miss. 2022) (citing *Copiah*

Cnty. v. Oliver, 51 So. 3d 205, 207 (Miss. 2011)). We apply a *de novo* standard of review when deciding issues of law. *Wayne Gen. Hosp. v. Hayes*, 868 So. 2d 997, 1000 (Miss. 2004). Application of a statute of limitations is a question of law to be reviewed *de novo*. *Id.*

¶7. Summary judgment is only properly granted when no genuine issue of material fact exists. M.R.C.P.56(c). A party moving for summary judgment has the burden of demonstrating that no genuine issue of material fact exists within “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any[.]” *Id.*

DISCUSSION

¶8. The issue on appeal is whether Carter’s claims were time barred under the MTCA. Carter maintains that the statute of limitations was tolled by the discovery rule until May 2018 when she obtained a second medical opinion, which, she states, was her first awareness of alleged medical negligence by UMMC. We disagree.

The Discovery Rule

¶9. The MTCA provides a one-year statute of limitations against a state entity that begins to run from the date of the “tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based”; “failure to file within the time allowed is an absolute bar to any further proceedings under this chapter.” Miss. Code Ann. § 11-46-11(3)(a), (b) (Rev. 2019). Further, this Court has held that the MTCA’s one-year statute of limitations provision is subject to the discovery rule found in Mississippi Code Section 15-1-36(1) (Rev.

2019). *Barnes v. Singing River Hosp. Sys.*, 733 So. 2d 199, 204 (Miss. 1999). As a result, the discovery rule tolls the running of the limitations period until a “plaintiff should have reasonably known of some negligent conduct, even if the plaintiff does not know with absolute certainty that the conduct was legally negligent.” *Sarris v. Smith*, 782 So. 2d 721, 725 (Miss. 2001).

¶10. This Court further addressed the discovery rule as applied to medical-malpractice cases in *Sutherland v. Estate of Ritter*, 959 So. 2d 1004, 1008 (Miss. 2007). In *Sutherland*, this Court held that “in medical negligence cases, we must focus our inquiry on when a plaintiff, exercising reasonable diligence, should have first discovered the negligence, rather than the injury.” *Id.* “The question of whether a statute of limitations is tolled by the discovery rule turns on the factual determination of ‘what the plaintiff knew and when.’” *McNinch ex rel. McNinch v. Brandon Nursing & Rehab. Ctr.*, 391 So. 3d 1133, 1135-36 (Miss. 2024) (internal quotation marks omitted) (quoting *Raddin v. Manchester Educ. Found. Inc.*, 175 So. 3d 1243, 1249 (Miss. 2015)). In *Sutherland*, this Court found that the “[plaintiff’s] *own suspicions and actions*, together with the passage of time from when the plaintiff first recognized the adverse effects from [a prescribed medication] until [the plaintiff] checked himself into the hospital . . . , were enough to satisfy the statutory requirement of discovery of the alleged medical negligence on the part of [the doctor].” *Sutherland*, 959 So. 2d at 1009.

¶11. Further, in *Jackson Clinic for Women, P.A. v. Henley*, 965 So. 2d 643, 650 (Miss.

2007), the plaintiff believed that some type of negligence had occurred while she was in the hospital talking with her sister. There, the plaintiff told her sister that she knew “[s]omething was wrong. Something was real wrong.” *Id.* at 650 (alteration in original) (internal quotation marks omitted). This Court found that because the plaintiff knew that negligent conduct might have occurred no later than the date of her conversation with her sister, the statute of limitations began to run at that time. *Id.* Likewise, “[t]his Court made clear in *Hayes* and *PPG [Architectural Finishes, Inc. v. Lowery]*, 909 So. 2d 47 (Miss. 2005),] that the plaintiff’s own suspicions regarding possible negligent conduct starts the clock running.” *Henley*, 965 So. 2d at 650.

¶12. In *Lowery*, 909 So. 2d at 50, the question before this Court was whether the plaintiff’s own suspicions and actions were enough to vest the right to a cause of action against a paint manufacturing company. If Lowery’s cause of action accrued when she originally knew or suspected, then the statute of limitations began running when she was injured. *Id.* at 51. This Court found that by Lowery’s own admission, she knew “when, how and by whom she had been injured on the night” of her exposure. *Id.* “The Court must consider Lowery’s actions in determining whether she ‘knew’ or ‘reasonably should have known’ that she had suffered an injury.” *Id.* This Court reasoned that seeking medical attention for side effects or symptoms confirms that Lowery knew she was injured. *Id.* This Court found that Lowery did not require absolute certainty nor an expert opinion to vest the right to a cause of action. *Id.* at 52.

¶13. According to Terrell’s deposition testimony in the present case, shortly after her shunt procedure in January 2018, Carter stated, “Yes, Mama, yes . . . there’s something done wrong. I need to see somebody else because there’s something wrong.” Carter then went on to explain in her own deposition that she felt as if she was not receiving proper care from UMMC “because I just feel like my sight was just leaving Like I shouldn’t have lost my sight if they’d done what they were supposed to do.”

¶14. Similar to *Lowery* and *Henley*, Carter had already come to the conclusion that she had not received proper care shortly after her shunt procedure. Like Henley, Carter believed that some type of negligence had occurred while she was in the hospital talking with her mother. She knew that “something [was] done wrong.” Again, “this Court made clear in *Hayes* and *Lowery* that the plaintiff’s own suspicions regarding possible negligent conduct starts the clock running.” *Henley*, 965 So. 2d at 650. Likewise, Carter did not need her medical records or a second opinion in order to file suit. Accordingly, Carter knew that negligent conduct might have occurred no later than the date of her conversation with her mother while she was still in the hospital shortly after her shunt procedure on January 19, 2018. Therefore, the statute of limitations began to run by late January 2018.

Carter’s Affidavit

¶15. On March 10, 2023, Carter filed her response to UMMC’s motion for summary judgment, and she attached an affidavit to the response that she had signed on March 1, 2023. In the affidavit, Carter attempted to clarify that her previous statements “were expressions

of fear and worry related to the fact that [she] was losing [her] vision and not getting any better, not because [she] knew of anything UMMC had done wrong.” We find such an affidavit to be self serving. “This Court has expressed disdain for conclusory, self serving affidavits used to support summary judgment.” *Sweet v. TCI MS, Inc.*, 47 So. 3d 89, 93 (Miss. 2010) (citing *Dalton v. Cellular S. Inc.*, 20 So. 3d 1227, 1234 (Miss. 2009)). Thus, “such affidavits . . . are not a sufficient basis for granting summary judgment.” *Sweet*, 47 So. 3d at 93 (citing *Dalton*, 20 So. 3d at 1233-34). But we have also found that affidavits that are conclusory and offered to cure contradictory deposition testimony may not amount to sufficient evidence to create a genuine issue of material fact. *Hubbard v. Wansley*, 954 So. 2d 951, 965-66 (Miss. 2007).

¶16. Stated differently, Carter may not defeat summary judgment by simply offering an affidavit to remedy her deposition testimony. *Hubbard*, 954 So. 2d at 965. Nor can this Court or the trial court summarily dismiss her affidavit as self serving and grant summary judgment. Rather, the appropriate standard requires the opposing party to offer specific facts or corroborating evidence, by affidavit or otherwise, that demonstrates a genuine issue of material fact. *Id.* at 965-66.

¶17. In her affidavit, Carter acknowledges several instances in her deposition testimony in which she stated that she felt, prior to her May 2018 consultation with Dr. Dillon, that UMMC had failed to properly treat her. Such testimony was further corroborated by her mother’s deposition testimony. We find that Carter’s affidavit offers no specific facts or

corroborating evidence to show a genuine issue of material fact in this case and, therefore, fails to defeat summary judgment.

Latent Injury

¶18. Carter contends that (1) she suffered a latent injury, and (2) because she suffered a latent injury, she could not have known of any negligent conduct on UMMC's part until she obtained a second opinion, hired an attorney, and received her medical records. She contends that, at her May 23, 2018, appointment with Dr. Dillon, she first became aware of the alleged omission/misdiagnosis by UMMC.

¶19. This Court has held that if a latent injury is not present, the discovery rule would not apply. *Chamberlin v. City of Hernando*, 716 So. 2d 596, 602 (Miss. 1998). We have also held that:

A latent injury is defined as one where the “plaintiff will be precluded from discovering harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question . . . [or] when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act.”

Lowery, 909 So. 2d at 50 (alterations in original) (quoting *Donald v. Amoco Prod. Co.*, 735 So. 2d 161, 168 (Miss. 1999)). “For an injury to be latent it must be undiscoverable by reasonable methods.” *Id.* at 51 (citing *Donald*, 735 So. 2d at 168). Further, this Court, in *Sutherland*, 959 So. 2d at 1008, clarified that the focus in medical-negligence cases involving latent injuries is centered on the date that the alleged act or omission with reasonable diligence might have been discovered as opposed to the nature of the injury itself.

¶20. Carter argues that her case is similar to a line of cases that involve the misdiagnosis of various medical conditions that were complex in nature. *See McLeod v. Millette*, 301 So. 3d 568 (Miss. 2020); *Davis v. Singing River Health Sys.*, 298 So. 3d 1042 (Miss. 2020); *Green v. Singing River Health Sys.*, 294 So. 3d 646 (Miss. Ct. App. 2020); *St. Andrie v. Singing River Health Sys.*, 347 So. 3d 1197 (Miss. Ct. App. 2022). In those cases, Singing River Hospital became aware of a physician who possibly misdiagnosed several patients with multiple sclerosis. *McLeod*, 301 So. 3d at 570. As a result, Singing River sent out letters informing all patients of a possible misdiagnosis and encouraged each patient to obtain an expert opinion. *Id.* The letters did not communicate that the doctor was negligent in his diagnosis or in his treatment but simply instructed the patients to receive a reevaluation of their diagnosis with another doctor for good measure. *Id.* at 574. This Court held that the statute of limitations was not tolled until each of these plaintiffs received information from a medical professional regarding the specific misdiagnosis. *Id.* at 576. The Court of Appeals held that the letters were generic and were therefore insufficient to put the plaintiffs on notice of their injuries or the act or omission that caused their injury. *Green*, 294 So. 3d at 655.

¶21. Carter argues that, like *Green* and *McLeod*, the statute of limitations could not begin to run until she received information from another medical provider that she had not been provided with proper care. *Green* and *McLeod* are clearly distinguishable from the present case, however, because the suspicion of negligence did not originate with the patients. Unlike *Green* and *McLeod*, Carter had already developed her own suspicion of negligence

in late January 2018 as evidenced by her deposition testimony in which she stated that “something is wrong” and that UMMC did not “do what they were supposed to do.” We find irrelevant that Carter did not have all of the specifics as to the injury until May 2018. Carter and her mother both testified to her suspicion of negligence after her shunt procedure in late January 2018, which meets the threshold to toll the statute of limitations as discussed in *Henley*, 965 So. 2d at 650. Therefore, Carter’s argument regarding latent injury is without merit.

¶22. Carter also contends that her lack of immediate access to her medical records impeded her ability to detect a negligence claim. Although a plaintiff’s access to medical records may have an impact on whether the injuries are deemed latent, we have expressly rejected “a bright line rule that the statute of limitations can never start to run until the plaintiff has access to medical records.” *Sarris*, 782 So. 2d at 725. We recognized that “[o]thers might gain enough actual knowledge of negligent conduct through personal observation or other means[.]” *Id.* “Because there is no bright line rule, the specific facts of the case will determine whether the plaintiff knew or reasonabl[y] should have known that an injury existed.” *F & S Sand, Inc. v. Stringfellow*, 265 So. 3d 170, 174 (Miss. 2019) (alteration in original) (internal quotation marks omitted) (quoting *Am. Optical Corp. v. Est. of Rankin*, 227 So. 3d 1062, 1075 (Miss. 2017)). In the present case, Carter verbalized her suspicion of negligence in late January 2018. Then, in May 2018, Dr. Dillon suggested negligence to

Carter without the benefit of medical records. Therefore, we find this argument to be without merit.

CONCLUSION

¶23. We find Carter's claims to be time barred by the MTCA; we further find that the trial court erroneously denied UMMC's motion for summary judgment. Therefore, we reverse the judgment of the trial court and render summary judgment in favor of UMMC.

¶24. **REVERSED AND RENDERED.**

KING, P.J., ISHEE, GRIFFIS AND SULLIVAN, JJ., CONCUR. COLEMAN, P.J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY ISHEE, GRIFFIS AND BRANNING, JJ. RANDOLPH, C.J., AND WILSON, J., NOT PARTICIPATING.

COLEMAN, PRESIDING JUSTICE, SPECIALLY CONCURRING:

¶25. The Legislature chose not to include a discovery rule in statute of limitations applicable to claims brought pursuant to the Mississippi Tort Claims Act. In its entirety, the applicable statute of limitations provides as follows:

(a) All actions brought under this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after, except that filing a notice of claim within the required one-year period will toll the statute of limitations for ninety-five (95) days from the date the chief executive officer of the state entity or the chief executive officer or other statutorily designated official of a political subdivision receives the notice of claim.

(b) No action whatsoever may be maintained by the claimant until the claimant receives a notice of denial of claim or the tolling period expires, whichever comes first, after which the claimant has an additional ninety (90) days to file

suit; failure to file within the time allowed is an absolute bar to any further proceedings under this chapter.

(c) All notices of denial of claim shall be served by governmental entities upon claimants by certified mail, return receipt requested, only.

(d)(i) To determine the running of limitations periods under this chapter, service of any notice of claim or notice of denial of claim is effective upon delivery by the methods statutorily designated in this chapter.

(ii) The limitations period provided in this section controls and shall be exclusive in all actions subject to and brought under the provisions of this chapter, notwithstanding the nature of the claim, the label or other characterization the claimant may use to describe it, or the provisions of any other statute of limitations that would otherwise govern the type of claim or legal theory if it were not subject to or brought under the provisions of this chapter.

Miss. Code Ann. § 11-46-11(3) (Rev. 2019). As the only exceptions to the one-year limitations period, the statute provides that the receipt of the notice of claim by the proper officer tolls the limitations period for ninety-five days, § 11-46-11(3)(a), and that the claimant has ninety days from the date of receipt of the denial of claim to file suit. § 11-46-11(3)(b). Also, effective July 1, 2026, the Legislature amended the statutory scheme to allow for tolling when a governmental entity fails to provide accurate notice-of-service information. Miss. Code Ann. § 11-46-20(6) (Supp. 2026); S.B. 2360, Reg. Sess., 2026 Miss. Laws ch. 425, §1. Otherwise, the statute explicitly provides that the “failure to file within the time allowed is an *absolute bar* to any further proceedings under this chapter.”

§ 11-46-11(3)(b) (emphasis added). The statute further provides:

The limitations period provided in this section *controls and shall be exclusive in all actions* subject to and brought under the provisions of this chapter,

notwithstanding . . . the provisions of any other statute of limitations that would otherwise govern the type of claim or legal theory if it were not subject to or brought under the provisions of this chapter.

§ 11-46-11(3)(d)(ii) (emphasis added).

¶26. Accordingly, it was not the Legislature that provided via properly enacted statute that the discovery rule found in Mississippi Code Section 15-1-36(1) (Rev. 2019) would apply to claims brought under the Tort Claims Act. Rather, it was the Mississippi Supreme Court in ***Barnes v. Singing River Hospital Systems***, 733 So. 2d 199 (Miss. 1999), that, without explanation, grafted the discovery rule into the Tort Claims Act’s one-year limitations period. The Court characterized the ***Barnes*** Court’s move to do so in the later ***Caves v. Yarbrough***, 991 So. 2d 142 (Miss. 2008), as follows:

Nine years ago, without citation of any authority to do so, this Court “incorporated” a discovery rule into the MTCA, stating simply that

we choose to incorporate a discovery rule in actions brought under the [MTCA] involving latent injuries. Particularly considering the short, one-year statute of limitations period in § 11-46-11(3), we find that justice is best served by applying a discovery standard to such cases.

Barnes v. Singing River Hosp., 733 So. 2d 199, 205 (Miss. 1999).

Caves, 991 So. 2d at 154 (¶ 44).

¶27. In ***Caves***, the Court considered whether ***Barnes*** should be overruled to the extent that it judicially engrafted a discovery rule onto the Tort Claims Act’s limitations period. ***Caves***, 991 So. 2d at 154 (¶¶ 44-47). Citing the concept of legislative acquiescence and the doctrine of *stare decisis*, the ***Caves*** Court declined to do so. ***Id.*** at 154 (¶ 47). As more fully set forth

below, we have since overruled cases in which we have judicially grafted language onto statutes on the grounds that doing so has a pernicious effect and, therefore, the decisions are not protected by *stare decisis*. As also set forth below, the concept of legislative acquiescence should not be given such force of law that it can protect a decision of the Supreme Court that judicially amends a statute.

I. Legislative Acquiescence

A. *The idea of legislative acquiescence should never control.*

¶28. After implicitly chiding the ***Barnes*** Court for lacking any authority for adding a discovery rule to the Tort Claims Act limitations period, the ***Caves*** Court, without citation of authority, reasoned that “the Legislature acquiesced and tacitly approved and incorporated into the statute a discovery rule as announced in ***Barnes***.” ***Caves***, 991 So. 2d at 154 (¶ 47). However, the idea that the Legislature somehow passes a judicial addition and makes it part of a statute by its silence when amending or reenacting the statute in question has several problems that prove fatal in the instant case.

¶29. First and foremost, our State’s Constitution provides clear instructions for how statutes are passed and ratified into law. *See, e.g.*, Miss. Const. art. 4, §§ 59, 60, 62, 72. That constitutionally prescribed procedure requires that bills originate in one house of the Legislature, pass both houses of the Legislature, and be signed by the President of the Senate and Speaker of the House of Representatives. Miss. Const. art. 4, § 59. To put the matter simply, the discovery rule has never as part of the Tort Claims Act been through the

necessary process. There is no provision in the Mississippi Constitution for part of a judicial opinion agreed upon by as few as five appellate court judges to be grafted into a statute by any means whatsoever, let alone by Legislative silence. Rather, the Constitution requires that for language to be contained in a statute, it first be made an explicit part of a bill that passes both houses of the Legislature. Second, we have no idea if the Legislators are aware of our opinions or, if they are aware, there exists agreement among them on language addressing them. Third, we have held that allowing judicial amendments to statutes has a pernicious effect. “We think it pernicious, i.e., harmful, for this Court to continue to exceed its constitutional authority by judicially amending [Mississippi Code] Section 97-3-65(4)(a) [(Rev. 2014)] and limiting a judge’s sentencing authority as established by the Legislature.” *Bester v. State*, 188 So. 3d 526, 529 (¶ 8) (Miss. 2016). More than legislative indifference should be required to ratify the courts’ exceeding of their constitutional authority by judicially amending Mississippi’s statutes.

B. Even if the doctrine were valid, the Legislature has amended Section 11-46-11 in such a way as to obviate its application here.

¶30. In 2012, the Mississippi Legislature, via Senate Bill 2845, amended Section 11-46-11. Among other changes, the Legislature added that “failure to file within the time allowed is *an absolute bar* to any further proceedings under” the Tort Claims Act. Miss. Code Ann. § 11-46-11(b) (Rev. 2012); S.B. 2845, Reg. Sess., 2012 Miss. Laws ch. 513, § 1. Obviously, 2012 came after our 2008 *Caves* decision and our 1999 *Barnes* opinion. If the so-called doctrine of legislative acquiescence applies when the Legislature amends a statute without

addressing the earlier holding in question, then it clearly does not apply here. The “absolute bar” language added in 2012 directly contradicts our earlier holdings to the effect that the statute of limitations includes a discovery rule. It is a mystery how, when considering preexisting language to the effect that the Tort Claims Act’s statute of limitations applies “exclusive” of and “notwithstanding” any other limitations statute *and* the 2012 amendment, the Legislature could make its rejection of a discovery rule any clearer.

II. *Stare Decisis*

¶31. In *Caves*, the Court declined to overrule *Barnes* on the grounds that *Barnes* was not wrong enough. The *Caves* Court discussed the now well-settled view of *stare decisis*, that a “former decision of this court should not be departed from, unless the rule therein announced is not only manifestly wrong, but mischievous.” *Caves* 991 So. 2d at 151 (¶ 36) (citing *Forest Prod. & Mfg. Co. v. Buckley*, 107 Miss. 897, 899, 66 So. 279 (1914)).

In *stare decisis* generally, we look for error, but, finding that, we look for more and we look largely in the area of public or widespread disadvantage. Ordinarily, we do not overrule erroneous precedent unless it is “pernicious,” *Stone v. Reichman-Crosby Co.*, 43 So. 2d 184, 190 (Miss. 1949); “impractical,” *Robinson v. State*, 434 So. 2d 206, 210 (Miss. 1983) (Hawkins, J., concurring); or is “mischievous in its effect, and resulting in detriment to the public.” *Childress v. State*, 188 Miss. 573, 577, 195 So. 583, 584 (1940). We look for “evils attendant upon a continuation of the old rule.” *Tideway Oil Programs, Inc. v. Serio*, 431 So. 2d 454, 467 (Miss. 1983).

Caves, 991 So. 2d at 151-152 (¶ 36) (quoting *State ex rel. Moore v. Molpus*, 578 So. 2d 624, 635 (Miss. 1991)). According to *Caves*, even if the current court disagrees with an earlier interpretation of a statute, we must continue to follow the erroneous interpretation “unless

we consider it ‘pernicious,’ ‘impractical,’ or ‘mischievous in . . . effect, and resulting in detriment to the public.’” *Id.* at 152 (¶ 38) (alteration in original) (citing *Childress*, 195 So. at 583).

¶32. Although the *Caves* Court, writing in 2008, lamented the dearth of guidance when looking for the prerequisites for overruling precedent listed above, that guidance has since been provided in cases in which the Court’s precedent goes beyond mere interpretation existing statutory language and, rather, strays into the realm of adding to or changing the statutory language. In *Bester v. State*, 188 So. 3d 526 (Miss. 2016), the Court considered a line of cases in which the Court added language to a sentencing statute. There, the defendant, Charles Bester, pleaded guilty to rape; the trial judge sentenced him to life imprisonment. *Id.* at 527 (¶ 1). The only issue on appeal was whether the trial court had the authority under the applicable sentencing statute, Mississippi Code Section 97-3-65(2), which, at the time, provided in pertinent part as follows:

[U]pon conviction, [the defendant] shall be imprisoned for life in the State Penitentiary if the jury by its verdict so prescribes; and in cases where the jury fails to fix the penalty at life imprisonment *the court shall fix the penalty at imprisonment in the State Penitentiary for any term as the court, in its discretion, may determine.*

Bester, 188 So. 3d at 528 (¶ 6) (footnote omitted) (quoting Miss. Code Ann. 97-3-65(2) (Rev. 2014)). The *Bester* Court overruled earlier precedent from the Mississippi Supreme Court that held that the trial judge could not sentence a defendant to life in prison if the jury declined to recommend a life sentence. Citing the Court’s “constitutional mandate to

faithfully apply the provisions of constitutionally enacted legislation,” *Id.* at 529 (¶ 10) (internal quotation marks omitted) (quoting *Univ. of Miss. Med. Ctr. v. Easterling*, 928 So. 2d 815, 820 (Miss. 2006)), the *Bester* Court chose to “return to a faithful application of [the sentencing statute’s] plain language.” *Id.*

¶33. Likewise, the Court today should return to a faithful application of the Tort Claims Act’s statute of limitations. The judicial addition of statutory language has been established by the Court as pernicious to the rule of law. The *Barnes* Court exceeded judicial authority when it added the discovery rule to Section 11-46-11.

CONCLUSION

¶34. I agree with the majority that, under our current cases that apply the judicially fabricated discovery rule to the Tort Claims Act, summary judgment in favor of the defendant is appropriate. However, for the foregoing reasons, I would also take the additional step of overruling *Barnes*, *Caves*, and the other cases in which we have held that the Tort Claims Act’s statute of limitations includes a discovery rule in the first place.

ISHEE, GRIFFIS AND BRANNING, JJ., JOIN THIS OPINION.