

Serial: [227472](#)

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2019-IA-01017-SCT**

***NATIONWIDE MUTUAL INSURANCE  
COMPANY, NATIONWIDE MUTUAL  
FIRE INSURANCE COMPANY AND  
NATIONWIDE PROPERTY &  
CASUALTY INSURANCE COMPANY***

***Petitioners***

***v.***

***STATE OF MISSISSIPPI***

***Respondent***

**EN BANC ORDER**

Now before the Court is Nationwide's petition for interlocutory appeal and the State's answer in opposition. Nationwide seeks leave to appeal the order of the Circuit Court of the First Judicial District of Hinds County, No. 25CI1:18-cv-00215-TTG, dated June 6, 2019, which denied entry of the parties' agreed scheduling order and gave notice of the trial court's intent to appoint a special master. After due consideration, we find that the petition is well taken and should be granted.

We further find that no further briefing is needed to render a decision. The appointment of a special master in Homeowner Assistance Program (HAP) cases pending before Judge Green in Hinds County has been addressed by this Court in two other cases: *Safeco Insurance Co. of America v. State*, No. 2017-IA-01554-SCT, 2019 WL 3955084 (Miss. Aug. 22, 2019) and *Liberty Mutual Insurance Co. v. State*, No. 2017-IA-1558-SCT, 2019 WL 3954808 (Miss. Aug. 22, 2019). Under our rulings in those cases, we vacate the

circuit court's June 6, 2019, Notice of Court's Intent appointing the special master and remand this case to the trial court for further proceedings consistent with this order.

IT IS THEREFORE ORDERED that Nationwide's petition for interlocutory appeal is granted.

IT IS FURTHER ORDERED that the circuit court's Notice of Court's Intent to Appoint Bobby Harges as special master, No. 25CI1:18-cv-00215-TTG, dated June 6, 2019, is vacated. This case is remanded to the trial court for proceedings consistent with this order. The notice of appeal having been deemed filed, the filing fee is due and payable to the Clerk of this Court.

IT IS FURTHER ORDERED that the State is taxed with all costs of this appeal.

SO ORDERED, this the 17<sup>th</sup> day of September, 2019.

/s/ Michael K. Randolph

MICHAEL K. RANDOLPH,  
CHIEF JUSTICE  
FOR THE COURT

AGREE: RANDOLPH, C.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

KING, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY KITCHENS, P.J.

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**KING, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH  
SEPARATE WRITTEN STATEMENT:**

¶1. As I argued in my dissent in *Safeco Insurance Co. of America v. State*, No. 2017-IA-01554-SCT, 2019 WL 3955084 (Miss. Aug. 22, 2019), I do not believe that the appointment of a special master was an abuse of discretion; instead of reversing the docket entry notifying the parties of the intent to appoint a special master, I would remand the case to the trial court to file the more specific order regarding the special master's duties mentioned in its docket notification, while cautioning the trial court that it should not in that order allow the ex parte communications and blind billing provisions that were placed in the special master orders in *Safeco* and *Liberty Mutual Insurance Co. v. State*, No. 2017-IA-1558-SCT, 2019 WL 3954808 (Miss. Aug. 22, 2019). The majority, however, finds that the trial court abused its discretion without even allowing it the opportunity to file its specific order regarding the special master.

¶2. In *Safeco*, this Court held that Mississippi Rule of Civil Procedure 53 does not allow a judge to appoint a special master because that judge has a crowded docket or is faced with a particular type of complex case. Yet nothing in Rule 53 prohibits a trial judge from doing so. Rule 53 states that, when the parties do not consent to a special master, “a reference shall be made only upon a showing that some exceptional condition requires it.” Miss. R. Civ. P. 53(c). This Court has held that “we will not assume that a trial judge of this state would issue an order of reference without some exceptional condition requiring it.” *Massey v. Massey*, 475 So. 2d 802, 806 (Miss. 1985). In *Safeco* and *Liberty Mutual*, the trial court did point to its heavy docket, and it also justified the appointment of a special master by “the complex issues involved in this case and the numerous pre-trial and discovery disputes filed and anticipated[.]” Indeed, the “complexity of modern civil litigation” is one reason attributed to the increasingly common nature of special master appointments. 2 Jeffrey Jackson et al., *Miss. Practice Series: Civil Procedure* § 26:1 (updated May 2019), Westlaw. “The rules governing civil practice in Mississippi and elsewhere are bottomed on three values: justice, speed and economy. . . . In some cases, special masters can assist the court by improving the quality of fact finding through more investigation of complex issues and the lending of the master’s expertise to the court.” *Id.* (citing Miss. R. Civ. P. 1). Furthermore, the trial court is in the best position to determine whether complexities in a case are sufficiently exceptional to warrant reference to a special master. *Miss. Power Co. v. Miss. Pub. Serv. Comm’n*, 135 So. 3d 887, 891 (Miss. 2014). Thus, I would find that the

trial court’s notification of its intent to appoint a special master via docket entry was not an abuse of discretion, particularly because the trial court was not afforded the opportunity to issue an order giving its reasons for appointing a special master and outlining the special master’s duties.

¶3. Rule 53 allows a court the discretion to grant a special master powers that are either broad or narrow in nature.

The order of reference to the master *may* specify or limit his powers and *may* direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and *may* fix the time and place for beginning and closing the hearing and for the filing of the master’s report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference  
.....

Miss. R. Civ. P. 53(d) (emphasis added). Rule “53(d) does not require that the order specify or limit the powers of the master, but only provides that the order ‘may’ do so; otherwise, the powers of the master are broad.” *Massey*, 475 So. 2d at 806. Special masters have even conducted the trial on the merits. *See, e.g., Loggers, L.L.C. v. 1 Up Techs., L.L.C.*, 50 So. 3d 992, 993 (Miss. 2011). Additionally,

special masters have been appointed to prepare accountings, determine profits, determine partnerships rights, equitably wind-up and dissolve businesses, value business interests, investigate estate administration, hold divorce hearings and consider compliance with divorce judgment, hold contempt hearings, hold civil commitment hearings, hold bar reinstatement evidentiary hearings, reconcile conflicting land surveys, conduct factual investigations, inventory assets and debts to determine an equitable distribution of personal

property, certify a church congregation's vote on whether to retain its pastor, partition property, resolve discovery disputes, and rule on pre-trial evidentiary issues.

Jackson, *supra*, at § 26:1. Indeed, “a reference containing no limitations is a general reference to report on all the issues, both of law and fact, involved in the litigation.” *Banks v. Banks*, 648 So. 2d 1116, 1124 (Miss. 1994) (quoting 5A James Wm. Moore et al., *Moore's Federal Practice* Ch. 53 (2d ed. 1994)). The primary restriction on a special master is that “the court cannot . . . refer the whole case to the master for final *decision*.” *Id.* (quoting Moore, *supra*, Ch. 53). The court, therefore, must decide issues and render a final decision. *Id.* (quoting Moore, *supra*, Ch. 53). Further, a special master is not authorized to order parties to perform specific duties as a result of a hearing. *Id.* The trial court in this case has yet to hand down an order that defines and specifies the duties and authority of the special master or makes findings as to the court's reasons for appointing a special master. I would allow the trial court to do so, in order to clarify and define the duties and authority of the special master.

¶4. The majority, with its rulings that trivialize and minimize Judge Green's ability, judgment, and findings, is micromanaging the administration of the Hinds County Circuit Court and this particular judge. Again, the trial court has not yet even been allowed to enter an order outlining the duties of the special master. The other cases referenced by this Court's order mention crowded dockets. The Court of Appeals has mentioned overcrowded dockets in three other counties in its 2019 opinions alone, yet this Court is not clamoring to appoint

special judges and micromanage those courts. In *Sullivan v. Maddox*, the Court of Appeals noted that in Simpson County Judge Shoemake appointed a special master because he had a full calendar, as well as administrative responsibilities. *Sullivan v. Maddox*, No. 2017-CA-00418-COA, 2019 WL 3423397 (Miss. Ct. App. July 30, 2019). This Court is also aware of other troubles in Simpson County that would contribute to congested dockets, namely the suspension of Judge Shoemake in 2016. See *Miss. Comm'n on Judicial Performance v. Shoemake*, 191 So. 3d 1211 (Miss. 2016). The Court of Appeals has also flagged overcrowded dockets as an issue (and a seemingly pervasive one) in Harrison County, which triggers speedy trial issues. *May v. State*, No. 2017-KA-01415-COA, 2019 WL 2183468 (Miss. Ct. App. May 21, 2019); see also *Parks v. State*, 228 So. 3d 853 (Miss. Ct. App. 2017). Scott County has also recently been flagged as having crowded docket problems, triggering speedy trial issues. *Ford v. State*, No. 2018-KA-00395, 2019 WL 2353432 (Miss. Ct. App. June 4, 2019). If the majority is so concerned about overcrowded dockets and the administration of justice, why, then, is it not also micromanaging judges in these courts, namely the Harrison County Circuit Court, the Simpson County Chancery Court, and the Scott County Circuit Court, or requesting the appointment of special judges in these counties? What is the difference between the Hinds County Circuit Court and the other courts who cite overcrowded dockets? Is it a difference in personalities of the judges? Or is some other clearly distinguishing factor the difference? The failure to treat all courts citing crowded dockets equally is puzzling.

¶5. I would grant the trial court the opportunity to enter an order outlining the reasons for appointing a special master and specifying the duties of the special master. Accordingly, I object to the order reversing the trial court's docket entry.

**KITCHENS, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.**