KENTUCKY LAW UPDATE

2025

ADVANCING THE PROFESSION THROUGH EDUCATION

Kentucky Court of Appeals Update

1 CLE Credit
Sponsor: Kentucky Court of Appeals

Compiled and Edited by:
The Kentucky Bar Association
Office of Continuing Legal Education
for
Kentucky Bar Association
2025 Kentucky Law Update

Published and Printed by:
Kentucky Bar Association, August 2025

Editor's Note: The materials included in the following Kentucky Bar Association Continuing Legal Education handbook are intended to provide current and accurate information about the subject matter covered as of the original publication date. No representation or warranty is made concerning the application of legal or other principles discussed by the instructors to any specific fact situation, nor is any prediction made concerning how a particular judge or jury will interpret or apply such principles. The proper interpretation of the principles discussed is a matter for the considered judgment of the individual legal practitioner. The faculty and staff of this Kentucky Bar Association CLE program disclaim liability therefor. Attorneys using these materials, or information otherwise conveyed during these programs, in dealing with a specific legal matter have a duty to research the original and current sources of authority. In addition, opinions expressed by the authors and program presenters in these materials do not reflect the opinions of the Kentucky Bar Association, its Board of Governors, Sections, Committees, or members.

Note to practitioners: These are the Opinions designated for publication by the Kentucky Court of Appeals for the specified time period. Practitioners should Shephardize all case law for subsequent history prior to citing it.

I. ARBITRATION

A. *Auto Venture Acceptance, LLC v. Blair*, 2022-CA-1458-MR, 2024 WL 3996765 (Ky. App. Aug. 30, 2024). Opinion Affirming by Acree, J.; Karem, J. (concurs) and Lambert, J. (concurs). Discretionary review granted 4/16/2025.

Auto Smart II, LLC (Auto Smart) agreed to sell Jerome Blair a 2008 Land Rover. Auto Smart and Blair entered into an installment contract and an arbitration agreement. As part of the installment contract, Auto Smart instantly assigned its rights to Auto Venture Acceptance, LLC (AVA). Several months later, Blair defaulted on the installment contract. AVA repossessed and sold the vehicle, leaving a remaining balance in excess of $9,000. AVA then assigned the installment contract to Service Financial Company (SFC). SFC filed this lawsuit to collect the remaining balance, and Blair filed a counterclaim as well as a third-party complaint against AVA. After answering the third-party complaint, AVA filed a motion to compel arbitration pursuant to the arbitration agreement. The Jefferson Circuit Court denied the motion, concluding AVA had previously assigned the right to compel arbitration to SFC. At issue in this appeal was whether the installment contract incorporated the arbitration agreement. The Court looked to the undisputed language on the face of the arbitration agreement and concluded the arbitration agreement, including the attendant right to compel arbitration, was incorporated into the installment contract. Consequently, when AVA assigned the installment contract to SFC, it assigned the attendant right to compel arbitration. Although the arbitration agreement purported to "survive any termination, payoff, or transfer," the Court concluded this merely contemplated the agreement's continued viability but did not alter that a right cannot be simultaneously assigned and retained, absent an agreement to that effect. As AVA had divested itself of the right to compel arbitration in assigning its rights to SFC, the circuit court correctly denied AVA's motion to compel arbitration.

B. *LP Louisville Quinn Drive, LLC v. Leonard-Ray*, 2023-CA-1338-MR, 704 S.W.3d 386 (Ky. App. 2025). Opinion Reversing and Remanding by Karem, J; Combs, J. (concurs) and Caldwell, J. (dissents and files separate opinion).

A resident of a long-term care facility was admitted following the execution of admission documents by his sister, who held his power of attorney. An agreement to arbitrate was required for the resident's admission and was signed by his sister. The resident was discharged after several months. Less than one year later, the resident was re-admitted to the facility. The admission documents for the second admission were initialed by the resident himself, including the agreement to arbitrate. Following the resident's death while in the facility's care, his estate filed suit alleging negligence

and wrongful death. Subsequently, the facility filed a motion to compel arbitration. The trial court denied the motion finding the arbitration agreement signed upon the resident's first admission was no longer in effect. The trial court further found that the resident's initials on the second agreement were not a "valid indication of assent" on behalf of the resident. The facility appealed. The Court reversed the trial court finding the first agreement was still in effect at the time of the resident's death. The presentation of the second arbitration agreement was not a novation of the first. Thus, an examination of the details regarding the execution of the second agreement was unnecessary. The trial court was ordered to dismiss the complaint and enter an order compelling arbitration.

II. CIVIL PROCEDURE

Rose v. Lexington-Fayette Urban County Government, 2024-CA-0432-MR, 707 S.W.3d 557 (Ky. App. 2025). Opinion Reversing and Remanding by A. Jones, J.; Combs, J. (concurs) and McNeill, J. (concurs).

In a direct appeal from the trial court's dismissal of Appellant's civil claims against the Appellees, the Court of Appeals reversed and remanded for further proceedings. Appellant's complaint was "signed" by the typewritten name of "Samuel G. Hayward." However, at the time the complaint was filed, attorney Samuel G. Hayward, Sr. was deceased. His son, Samuel G. Hayward, Jr., was also an attorney in the same law firm as his father. Appellees convinced the trial court that the typewritten signature of "Samuel G. Hayward" referred to the deceased father because it omitted "Jr." Appellees argued that Appellant's complaint violated CR 11 because, as it observed, "the signature of a deceased attorney who died well before the filing of the Complaint and who was never counsel of record in this action is invalid and wholly fails to meet basic Rule 11 requirements." At this point, the five-year statute of limitations had expired for the Appellant's claims, and the complaint could not be refiled. The trial court agreed with the Appellees' reasoning, and so it struck the complaint and dismissed the action. The Court of Appeals reversed, holding the trial court improperly struck the complaint based on the typewritten signature. The absence of "Jr.," standing alone, does not prove the typewritten signature was meant to be that of the deceased father instead of the son. Furthermore, the Appellees did not offer any testimony or assertions from Samuel G. Hayward, Jr. about the signature, only speculation. Speculation is not evidence. Finally, although it is true that the typewritten signature in this case violated Rule 11, the deficiency was not called to Appellant's attention. Rule 11 contemplates that an omission of a specific nature, *e.g.*, "the omission," will be "called to the attention" of the pleader or movant, and that the pleader or movant will be given an opportunity to dispute the alleged omission and – if it is indeed an omission – an opportunity to promptly cure it. The rule only authorizes the striking of a complaint for omissions "called to the attention of the pleader," which did not occur in this case.

III. CIVIL RIGHTS

A. *Hawkins v. Board of Education of Scott County*, 2023-CA-0688-MR, 2025 WL 1415680 (Ky. App. May 16, 2025). Opinion Affirming by A. Jones, J.; Acree, J (concurs) and Cetrulo, J. (concurs).

James Hawkins, a diabetic, was terminated from his position as a bus mechanic when he began an insulin regimen and became ineligible to maintain a CDL with passenger and school bus endorsements. The Scott Circuit Court granted the Board of Education summary judgment on Hawkins's claim for disability discrimination under the Kentucky Civil Rights Act. The Court held Hawkins was not "otherwise qualified" to perform the essential functions of the employment position, with or without reasonable accommodation. Mechanics were required to test drive buses, drive operational buses to breakdowns, and substitute on bus routes. The position required four years of experience and thus was specialized. The circuit court properly concluded having a CDL with the S and P endorsements was an essential function of the job. There was no genuine issue of material fact. Alternatively, even if Hawkins could have obtained a medical waiver, the Board did not fail to engage in the interactive process for making reasonable accommodations. Hawkins did not request an accommodation that would have allowed continued employment. That would have triggered the employer's obligation to engage in the interactive process. Hawkins never applied for or obtained a medical waiver or mentioned it to the Board, and there is no guarantee he would have qualified. The Board offered Hawkins other alternatives which he rejected. The Board was not obligated to restructure the position to anticipate accommodations which were not proposed. The Court affirmed.

B. *Fayette County Board of Education v. Mitchell*, 2023-CA-0743-MR, 2025 WL 1717110 (Ky. App. June 20, 2025). Opinion Reversing by Acree, J.; Thompson, C.J. (concurs) and Caldwell, J. (dissents and files separate opinion).

Fayette County Board of Education (Employer) appealed the trial court's denial of its directed verdict and JNOV motions in a trial that resulted in a jury verdict for Kelvin Bruce Mitchell (Employee) on his claim of race-based disparate treatment by Employer. The Court of Appeals reversed the judgment and remanded with instructions to enter a judgment notwithstanding the verdict. Applying jurisprudence governing disparate treatment race discrimination claims, the Court determined Employee failed to satisfy his intermediate burden of evidence production. Of the four elements of his *prima facie* claim of disparate treatment discrimination, Employee could only prove his inclusion in a protected class. There was no evidence supporting allegations he suffered an adverse employment action; no evidence that there was a vacant position for which he applied and was qualified; and no evidence that similarly situated individuals not belonging to the protected class were treated better or differently. The majority also discussed the idiosyncrasy of Kentucky jurisprudence that impacts application of the federal discrimination law guidance at the summary judgment stage, caused by the differences in summary judgment standards of *Steelvest vis-à-vis* the federal standard for summary judgment. This discussion was necessary to demonstrate that federal summary judgment

jurisprudence in discrimination cases is as persuasive as its directed verdict jurisprudence—the federal standards for summary judgment and directed verdict are both the same as Kentucky's standard for directed verdict, namely, the scintilla rule. Furthermore, the Court discussed how the trial court's numerous erroneous rulings, chief among them being the rulings that allowed the jury to hear inadmissible hearsay, contributed to the jury's verdict. Employee and the trial court were adamant throughout the trial that no hostile work environment claim was alleged nor was the claim prosecuted as such, and neither Employer nor Employee briefed the issue. However, the dissent would have affirmed as if it were a hostile work environment claim.

IV. CLASS CERTIFICATION

Kentucky State Lodge Fraternal Order of Police v. County Employees Retirement System, 2024-CA-0812-ME, 2024-CA-0813-ME, 2024-CA-0853-ME, 2024-CA-0855-ME, 2025 WL 1481973 (Ky. App. May 23, 2025). Opinion Affirming by Eckerle, J.; Easton, J. (concurs) and Karem, J. (concurs).

The Plaintiffs below comprise governmental retirees covered by the County Employees Retirement System (CERS). Prior to 2014, the retirees were entitled to receive health insurance coverage from the Kentucky Retirement Systems (now, the Kentucky Pensions Authority) throughout their retirement. After 2014, the Retirement Systems notified retirees that they would be terminated from their state-provided coverage and required to enroll in Medicare upon reaching age 65. The retirees brought several actions in Franklin Circuit Court as to the merits of their claims to additional coverage. As a preliminary and expedited matter, they sought class-action certification. The circuit court granted certification for the classes seeking injunctive and declaratory relief but denied it as to damages. On appeal and cross-appeal, the Kentucky Court of Appeals affirmed. In the direct appeal, the Court noted that the requirements for each proposed class involved distinct issues and proof as to damages. The Court affirmed the circuit court's finding that the retirees failed to establish that common questions of law or fact predominated over individual claims. Given the wide disparity in the type of damages sought, the Court held the retirees failed to establish that a class action would be the superior method of adjudication. In the cross-appeal, the Court concluded that the Pensions Authority failed to show the circuit court erred in rejecting its claims that certification was unnecessary. It ruled the proposed subclasses for declaratory and injunctive relief are neither unworkable nor improper. They can also be reasonably defined without reference to the ultimate outcome of this litigation. Thus, the Court concluded the circuit court did not abuse its discretion by granting class certification of the subclasses seeking declaratory and injunctive relief and by denying certification of the proposed damages subclasses. This ruling is confined to the class action certifications, and the Court expressed no opinion as to the merits of the underlying litigation.

V. CONSTITUTIONAL LAW

A. *Doe v. Dean*, 2023-CA-0844-MR, 699 S.W.3d 185 (Ky. App. 2024). Opinion Affirming by Easton J.; Caldwell, J. (concurs) and Combs, J. (concurs).

This appeal deals with the constitutionality of the "anti-grandfathering clause" of Kentucky's sex offender registry residence restrictions in KRS 17.545(3)(b). In 2007, Doe pled guilty to one felony count of possession of matter portraying a sexual performance by a minor and was required to register as a sex offender for 20 years. KRS 17.520(3). In 2022, Doe and his wife purchased a home in Mercer County. At the time, it was located outside of the 1,000 foot restriction imposed by KRS 17.545(1). Later in 2022, a daycare opened within 1,000 feet of Doe's home, and he was told to move. Doe filed this action and asserted that KRS 17.545(3)(b) was unconstitutional because: (1) the application of the anti-grandfather clause to him results in a violation of the takings clause pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Section 13 of the Kentucky Constitution; (2) it violates his right to acquire and protect property under Section 1 of the Kentucky Constitution; (3) it is an arbitrary state action in violation of Section 2 of the Kentucky Constitution, which is also inconsistent with due process; (4) it is a prohibited *ex post facto* law in violation of Article 1, Section 9 of the United States Constitution and Section 19 of the Kentucky Constitution; (5) it is a prohibited bill of attainder in violation of Article 1, Section 9 of the United States Constitution; and (6) it is void for vagueness. The trial court dismissed Doe's petition, concluding the statute is not unconstitutional.

The Court of Appeals first determined that KRS 17.500(7)'s definition of "reside" is not vague and applies to a place where a person sleeps. The anti-grandfather clause is also not a bill of attainder. Doe could not be convicted of violating the residency restrictions provided by the legislature without the opportunity for a judicial determination, which would include Doe's right to challenge the validity of the law – the bill of attainder clause does not provide a basis for a challenge to the anti-grandfather clause. Furthermore, the statute does not violate Doe's due process rights under either the Kentucky Constitution or the United States Constitution. This is a substantive due process claim which is scrutinized under rational basis review. Residency restrictions are rationally related to the legitimate state interest of protecting children and does not offend due process. Additionally, the anti-grandfather clause is not an *ex post facto* law. Doe was aware of the requirements of the statute when he pled guilty, and his restrictions have not substantively changed since then. Doe has always known it was possible he would have to move due to the statutory requirements, and that does not constitute a punishment. Finally, the impact on Doe's property because of the statute's residency restrictions is not a taking under the Fifth or Fourteenth Amendments to the United States Constitution or Section 1 of the Kentucky Constitution. The fair market value of Doe's home has not necessarily been diminished as Doe can sell or rent the residence, and there has been no significant interference with his investment-backed expectations. Therefore, the trial court was affirmed.

B. *R.L.P. v. Commonwealth*, 2023-CA-1254-MR, 2025 WL 420930 (Ky. App. Feb. 7, 2025). Opinion Affirming by A. Jones, J.; Cetrulo, J. (concurs) and Combs, J. (concurs).

In a direct appeal from the trial court's order of involuntary and indefinite commitment, the Court of Appeals affirmed, upholding the constitutionality of KRS Chapter 202C. Appellant presented three arguments on appeal. First, Appellant argued the statute unconstitutionally deprives due process for the mentally ill. This argument contained two essential subparts: (1) the initial evidentiary hearing, in which the trial judge determined whether a respondent is "guilty" by a preponderance of the evidence and without a jury, violates due process; and (2) the statute violates due process because it creates a more restrictive commitment reserved only for those found incompetent. In his second main argument, Appellant argued the General Assembly violated Sections 46 and 51 of the Kentucky Constitution while in the process of enacting HB 310, which created KRS Chapter 202C. Third, Appellant argued the trial court erroneously allowed hearsay testimony from the Commonwealth's medical experts during his commitment hearing.

The Court of Appeals rejected Appellant's arguments. First, it disagreed that KRS Chapter 202C violated due process, holding that the initial evidentiary hearing on "guilt" is a threshold or screening mechanism prior to the actual commitment hearing. While the evidentiary hearing is without a jury and uses a preponderance standard, the commitment hearing allows the respondent to opt for a jury, and commitment must be determined using the criminal standard of beyond a reasonable doubt. Furthermore, although this two-part process uses terms borrowed from criminal law, involuntary commitment under KRS Chapter 202C is a civil proceeding. Next, the Court declined to consider Appellant's argument that the statute is unconstitutional for creating a more restrictive commitment based on incompetence because this argument was not presented to the trial court. For Appellant's second argument, the Court held the passage of HB 310 did not violate Section 46 (the "three-reading" requirement) or Section 51 (the title requirement) of the Kentucky Constitution. Appellant relied heavily on *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74 (Ky. 2018), arguing that because HB 310 was amended to insert language creating KRS Chapter 202C, the General Assembly should have re-read the amended bill an additional number of times. The Court agreed with the trial court's analysis that this bill was factually distinct from the scenario in *Bevin*, and the process was sufficient in this case. Similarly, the Court held the General Assembly did not violate Section 51's requirement that the title of a bill relate to the subject. The amended title of HB 310, "An Act relating to crimes and punishments and declaring an emergency" was enough to give "general notification of the general subject of the act," which is all that is required. *Martinez v. Commonwealth*, 72 S.W.3d 581, 584 (Ky. 2002). Finally, the Court disagreed with Appellant on the hearsay question and affirmed the trial court's admission of the Commonwealth's experts' testimony. The issue surrounded whether the doctors could reference psychiatric risk assessment tools that were administered by other staff members at the Kentucky Correctional Psychiatric Center. KRE 703 "embodies the well-established rule that experts are permitted to base their opinions on facts and data that are not otherwise admissible in evidence, if they are of a type reasonably relied upon by other experts in their field." *Exantus v. Commonwealth*, 612 S.W.3d 871, 899

(Ky. 2020). Because the doctors testified that the risk assessments were tools typically relied upon by psychiatrists, as well as the fact that the doctors used their own individual conversations with Appellant to form their opinions, the Court discerned no error in the trial court's admission of the testimony.

C. *Marshall v. Commonwealth*, 2023-CA-1440-DG, 2025 WL 807688 (Ky. App. Mar. 14, 2025). Opinion Affirming by Cetrulo, J.; Thompson, C.J. (concurs) and Combs, J. (concurs).

The Court granted discretionary review from a Jefferson Circuit Court order addressing the constitutionality of Louisville Metro Code of Ordinances ("LMCO") §§135.03 and 135.99. Albert Marshall was charged with a violation of the ordinance which bars the discharge of firearms within 300 feet of a public roadway or alley. LMCO §135.99 makes a violation of §135.03 a misdemeanor punishable by a fine of up to $500 and/or up to 12 months of incarceration. The district court held the ordinances violated Kentucky's separation of powers doctrine to the extent that they authorized incarceration, which the district court believed to be a non-delegable legislative power. The circuit court disagreed, reversed, and remanded the case to the district court to continue Marshall's prosecution. The Court of Appeals affirmed the circuit court. It held the ordinances are constitutional because the legislature properly delegated its power to designate misdemeanor crimes. KRS 500.020 reserves the power to create crimes to the legislature, with exceptions. KRS 83A.065 allows cities to "make the violation of any of its ordinances a misdemeanor or a violation by the express terms of the ordinance." KRS 83A.065 fits within the exception enunciated in KRS 500.020(1). The legislature is aware of existing Kentucky laws when it enacts new laws, and the Court reads multiple statutes in harmony to give each statute the legislature's intended effect. *See Maysey v. Express Servs., Inc.*, 620 S.W.3d 63, 71 (Ky. 2021) (citations omitted); *see also Kentucky Department of Corrections v. Dixon*, 572 S.W.3d 46, 49 (Ky. 2019) (citations omitted). Further, KRS 67C.101(2)(a) gives consolidated local governments, like Louisville Metro, the powers retained by other Kentucky cities, such as the powers in KRS 83A.065. Finally, the Kentucky Constitution permits the legislature to delegate legislative power to municipalities where, as here, the requisite safeguards were instilled. Thus, the Court held Louisville Metro lawfully enacted LMCO §§135.03 and 135.99, and the ordinances are enforceable.

D. *Commonwealth ex rel. Coleman v. Kentucky Education Association*, 2023-CA-1025-MR, 2023-CA-1194-MR, 2024-CA-0452-MR, 2025 WL 728078 (Ky. App. Mar. 7, 2025). Opinion Affirming in Part, Vacating in Part, and Remanding on Appeal Nos. 2023-CA-1025-MR AND 2024-CA-0452-MR and Reversing on Cross-Appeal No. 2023-CA-1194-MR by Easton, J.; Cetrulo, J. (concurs) and Combs, J. (concurs).

These appeals stemmed from final orders of Franklin Circuit Court and Jefferson Circuit Court, which both determined that an exemption within 2023 Senate Bill 7 ("SB 7") violates equal protection guarantees of the Kentucky Constitution. Both courts permanently enjoined SB 7 in its entirety without specification of who and what was enjoined. Cross-Appellant Doug Bechanan, in his official capacity as Superintendent of Nicholas County Schools ("Superintendent"), filed a cross-appeal

challenging the Franklin Circuit Court's determination that venue for the Superintendent was proper in Franklin County. House Bill 364 ("HB 364"), as first introduced, would prohibit all public employers from deducting from an employee's wages membership dues for any "labor organization." SB 7 would prohibit all public employers from deducting amounts from an employee's wages that were to be spent on "political activities" through labor organizations but would allow public employers to deduct membership dues from employees' wages. After passing the Senate, House Committee Substitute 1 combined various portions of SB 7 and HB 364. This amended version contained an added exemption for the benefit of some labor organizations and is the primary subject of these appeals. Three questions were answered by the Appellate Court: 1) Was the venue proper for the Superintendent in Franklin County? 2) Does the exemption within SB 7 violate principles of equal protection of the law under Section 1, 2, or 3 of the Kentucky Constitution? 3) If so, was the injunction issued overly broad because those enjoined and the acts enjoined were not specified?

First, the venue was improper as to the Superintendent, as he neither lives in nor is employed in Franklin County. This case involved a constitutional challenge to a statute, and the legislature has provided specific rules for the applicable venue per KRS 452.005. Superintendents are officers of the school districts that employ them, and they are not employed by the "state" so as to make them state officers as intended by KRS 452.005(1)(c)1. While the Superintendent is a public servant, as that term is generally understood, he is not an employee within the executive branch of state government which the legislature intended to include under KRS 452.005(1)(c) and as extended by KRS 11A.010(9)(h). Second, the Court agreed with the circuit courts' ultimate conclusion that SB 7's distinction between those labor organizations primarily representing employees in protective vocations and all other labor organizations representing other public employees lacked a rational basis. The legislative regulation at issue here, payroll deduction policies, is a matter of social or economic policy. It does not involve any suspect class requiring strict scrutiny or a similar heightened level of review. Rather, the question is whether there is any rational basis for the different treatment of individuals. The exemption in SB 7 was supposed to give identified groups of employees the right to use payroll deductions, but it does not do so. It favors some labor organizations and disfavors others for no rational reason when we consider the subject of the law relates to the right of individual employees to use payroll deductions. Thus, the exemption contained in KRS 336.180(10) (Section 1(10) of SB 7) violates the equal protection guarantee embodied in Sections 1, 2, and 3 of the Kentucky Constitution. Third, the injunctions are overly broad and vague. The circuit courts enjoined SB 7 without specifying who was enjoined. Injunctions are directed to individuals, not laws. Although the Commonwealth is a party to these cases, this does not excuse some specification of who is enjoined. *Commonwealth v. Mountain Truckers Ass'n, Inc.*, 683 S.W.2d 260, 263 (Ky. App. 1984). Because of the Court's conclusions about the constitutionality of SB 7, it is appropriate to remand these cases to the circuit courts to modify the terms of the injunctions entered consistent with *Mountain Truckers, supra*. In conclusion, the Court reversed the Franklin Circuit Court's determination of venue for the Superintendent, as it found venue to be improper. The Court affirmed the conclusions of the Franklin and Jefferson Circuit Courts that the exemption for

certain labor organizations within SB 7 is an unconstitutional violation of equal protection of the law. Finally, it remanded and vacated both Case No. 2023-CA-1025 and Case No. 2024-CA-0462 only to direct modification of the injunctions to specify the application of the injunctions to those parties called upon to enforce the law and the actions enjoined.

E. *Bessinger v. Commonwealth*, 2024-CA-0289-MR, 2025 WL 1416244 (Ky. App. May 16, 2025). Opinion Affirming by Cetrulo, J.; Acree, J. (concurs) and Taylor, J. (concurs).

Bessinger appealed from the trial court's order denying his motion to suppress evidence obtained as a result of a warrantless search, arguing the search was an unconstitutional search and seizure. A police officer used his flashlight to shine into Bessinger's vehicle parked in the driveway and he discovered bags of marijuana. The Court upheld the trial court's ruling. It was Bessinger's burden to show his vehicle was within the home's protected curtilage, and he did not meet that burden on these facts. Further, the seized evidence – bags containing marijuana – was in plain view, and the officer was on the driveway with permission. The officer's use of a flashlight after dark did not negate the plain view element.

VI. CONSTITUTIONAL STANDING

Kentucky Constables Association, Inc. v. Kentucky Department of Corrections Criminal Justice Training, 2024-CA-0186-MR, 2025 WL 1196913 (Ky. App. Apr. 25, 2025). Opinion Affirming by L. Jones, J.; Thompson, C.J. (concurs) and Caldwell, J. (concurs).

Appellants bring this appeal from a Franklin Circuit Court order granting five motions to dismiss pursuant to CR 12.02. The Court affirmed the circuit court's order granting the motions to dismiss for failure to state a claim upon which relief could be granted and dismissing the petition for declaration of rights in favor of Appellees. This appeal pertains to constables, the necessary qualifications, and scope of the office as set forth under the Kentucky Constitution, Sections 99, 100, and 101. In 2022, the General Assembly enacted 2022 Kentucky House Bill No. 239 (HB 239), which introduced both new and amended legislation to improve the regulation of constables in the Commonwealth. HB 239 created KRS 70.325, which essentially removed from newly elected constables the authority to exercise the general powers of peace officers and police officers absent the mandated certification. Subsequently, Appellants sought both a declaration that the statutory amendments made by HB 239 were unconstitutional and a stay against the enforcement of the new law, arguing that HB 239 unlawfully alters the Kentucky Constitution by stripping constables of police powers and changing qualifications for the office of constable. Appellants set forth nine claims against Appellees. However, an initiating party of an action must have the requisite constitutional standing, as defined by three requirements: injury, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). After a thorough analysis of Appellants' many claims of error as to each Appellee, the Court concluded Appellants largely failed to show the named agencies and individuals were responsible for the alleged harm and entirely failed to establish redressability. Furthermore, the General Assembly is allowed to set forth powers and duties by statute to the office of constable because the Kentucky Constitution is silent thereto, despite the office being created by the Kentucky Constitution. Amending or creating legislation to alter those powers

and duties or place limits upon the exercise of those powers and duties does not alter the qualifications for the office set forth by the Constitution. Additionally, the office of constable has not been rendered an empty shell by the new legislation. Constables can still exercise many of their traditional functions, they can still assist the courts and others with the service of papers, and they may still pursue the certification necessary to exercise police power. In sum, Appellants have no right to exercise police powers bestowed on them by the Kentucky Constitution and have failed to present any justiciable claims against Appellees. The Court affirmed the circuit court's dismissal for failure to state a claim upon which relief could be granted.

VII. CRIMINAL LAW

A. *Amboree v. Commonwealth*, 2023-CA-0769-MR, 2024 WL 3837046 (Ky. App. Aug. 16, 2024). Opinion Vacating and Remanding by Cetrulo, J.; L. Jones, J. (concurs) and Lambert, J. (concurs). Discretionary review granted 3/12/2025.

Amboree appealed the Henderson Circuit Court's judgment, which sentenced him to six years of imprisonment for two convictions of possession of a controlled substance under KRS 218A.1415. A jury found Amboree guilty of two felonies: possession of methamphetamine and possession of fentanyl. For those crimes, the circuit court imposed two three-year sentences to run consecutively for six years. Amboree challenged that sentence, arguing the circuit court may only run his sentences consecutively for three years, not six. He argued that KRS 532.080 excludes convictions for possession from a sentence enhancement, and KRS 532.110(1)(c) therefore caps a consecutive sentence at three years. The Court of Appeals held that Amboree's consecutive sentences exceeded the statutory cap provided by law. The Court noted the maximum term of incarceration for possession crimes under KRS 218A.1415(2)(a) is three years, unlike the five-year maximum for other Class D felonies. It then pointed to subsection (8) of the PFO statute, KRS 532.080(8), which bars convictions for possession of a controlled substance from a sentence enhancement. Thus, the Court reasoned the PFO statute only authorizes Amboree's sentences for possession to run consecutively for up to three years. So ruling, the Court discussed *Commonwealth v. Gamble*, 453 S.W.3d 716 (Ky. 2015), in which the Supreme Court held that sentences for second-degree trafficking qualify for a PFO enhancement and may run consecutively for up to 20 years, despite the three-year maximum provided by KRS 218A.1413. In doing so, the Supreme Court compared the language of the trafficking statute with the possession statute, recognizing that "KRS 218A.1415 has much clearer language. The statute states that despite its classification as a Class D felony, first-degree possession of a controlled substance carries a 'maximum term of incarceration [ ] no greater than three (3) years, notwithstanding KRS Chapter 532.'" *Id.* at 720-21. Similarly, the Court of Appeals in *Eldridge v. Commonwealth*, 479 S.W.3d 614 (Ky. App. 2015), had noted that the language of KRS 218A.1415 means no section of KRS Chapter 532, including the PFO statute, may enhance sentences for possession beyond three years. *Id.* at 619 (*quoting Gamble* at 720-21 (Ky. 2015)). For these reasons, the Court of Appeals vacated Amboree's sentence and remanded for resentencing.

B. *Williams v. Commonwealth*, 2023-CA-0988-MR, 2023-CA-0403-MR, 706 S.W.3d 285 (Ky. App. 2024). Opinion Reversing by Taylor, J.; Combs, J. (concurs) and L. Jones, J. (concurs).

In 2019, Williams was indicted by a Christian County grand jury on eight counts of first-degree criminal abuse, victim 12 years of age or less. KRS 508.100. Williams was a pastor at First Methodist Church (FUMC) when several daycare employees reported incidents of abuse of the children at FUMC's daycare to Williams. The alleged perpetrator was Simpson, an employee of the daycare. Williams did not initially act on the reports of abuse despite the evidence presented to him. Eventually, the abuse was reported to a parent, who reported the abuse to the police. After obtaining a search warrant, the hard drive of the daycare's video recording system was seized and revealed eight incidents of children being abused by Simpson. Williams was subsequently indicted on eight counts of criminal abuse in the first degree, victim 12 years of age or less. Following a jury trial, Williams was found guilty of the lesser included offense of criminal abuse in the third degree, victim 12 years of age or less. On appeal, Williams contended the trial court erred by denying her motion for a directed verdict of acquittal upon the offenses of criminal abuse, and that she did not have actual custody of the children. Because she never had custody of the children, Williams contends the Commonwealth failed to prove an essential element of criminal abuse. The Court agreed with Williams. The plain language of KRS 508.120 indicates the defendant must have actual custody of the abused child. "Actual custody" must necessarily include the direct care or the direct control of a child by a defendant, and the evidence in this case indicated that Williams never exercised direct care or control over the children. Thus, the trial court's order was reversed.

C. *Calloway v. Commonwealth*, 2023-CA-0143-MR, 708 S.W.3d 447 (Ky. App. 2024). Opinion Affirming by Acree, J.; Cetrulo, J. (concurs) and Taylor, J. (concurs).

Michael Calloway was convicted of first-degree rape and first-degree sexual abuse of a child. The Kentucky Supreme Court affirmed his rape conviction but vacated his sexual abuse conviction. Calloway then challenged his rape conviction in a collateral attack, moving the circuit court to vacate his conviction due to ineffective assistance of counsel. Calloway argued: 1) both his trial counsel and appellate counsel had failed to challenge a jury instruction that called into question the unanimity of the verdict; 2) his appellate counsel was ineffective for failing to raise the issue of the circuit court overruling for-cause juror challenges; and 3) his trial counsel was ineffective for failing to call Calloway or an expert witness to testify at trial. The circuit court rejected Calloway's arguments and denied his motion. In reviewing Calloway's first argument, the Court observed the Kentucky Supreme Court offered clarity on the issue of unanimous verdicts in *Johnson v. Commonwealth*, 405 S.W.3d 439 (Ky. 2013), and later *Johnson v. Commonwealth*, 676 S.W.3d 405 (Ky. 2023), and has outlined three types of jury instructions that violate the requirement of a unanimous verdict. They include the type of instruction at issue in Calloway's trial: a single instruction involving one count of an offense that may be satisfied by multiple criminal acts over time. However, although our jurisprudence is clearer today, ineffective assistance of counsel claims must be evaluated in the context of contemporaneous jurisprudence. As Calloway's trial and direct appeal predated this

jurisprudence, the Court concluded his trial counsel and appellate counsel were not ineffective for failing to challenge the jury instruction, as there was no contemporaneous jurisprudence that clearly stated such an instruction violated the requirement of a unanimous verdict. The Court also rejected the argument that Calloway's appellate counsel was ineffective for failing to request palpable error review of the issue, given the prevailing palpable error standard at that time. In evaluating Calloway's second argument, the Court determined that although Calloway's appellate counsel filed a deficient brief with respect to the for-cause juror challenges, his appellate counsel was not ineffective, as Calloway had not shown requisite prejudice. Finally, in evaluating Calloway's third argument, the Court determined that Calloway's trial counsel had informed him of his right to testify, with Calloway choosing not to, and trial counsel's decision not to call an expert witness to testify fell squarely within the realm of trial strategy. As such, his trial counsel's decision not to call either Calloway or the expert witness did not constitute ineffective assistance. Having rejected Calloway's arguments, the Court affirmed the circuit court's denial of his motion.

D. *Cornett v. Commonwealth*, 2023-CA-0680-MR, 2024 WL 4469176 (Ky. App. Oct. 11, 2024). Opinion Affirming by Acree, J.; Easton, J. (concurs and files separate opinion) and Goodwine, J. (concurs). Discretionary review granted 3/12/2025.

Before a jury convicted Cornett of first-degree possession of a controlled substance, the circuit court denied his motion for a directed verdict. Cornett argued that although he was in possession of LSD, he thought he bought and was in possession of (unprescribed) Suboxone. He argued that because he did not know he was in possession of LSD, the Commonwealth failed to satisfy the "knowledge" element of the crime and, therefore, the circuit court should have directed an acquittal. The Court of Appeals disagreed. Examining the applicable statute, KRS 218A.1415, the Court noted the legislature defined the crime as "possession of a controlled substance." Citing the statutory definition of "knowledge," the Court held "possession of a controlled substance" is the "circumstance described by [the applicable] statute defining [the] offense" and the defendant need only be "aware that his conduct is of that nature or that the circumstance exists." KRS 501.020(2). Additionally, the Court noted the statute is part of Kentucky's version of the Uniform Controlled Substances Act which aspires "to make uniform the law . . . among States enacting it." Examining other jurisprudence, the Court concluded its interpretation was consistent with the overwhelming majority of jurisdictions that considered the question. Judge Easton concurred but wrote separately, noting his conclusion that the evidence was sufficient to support the jury's inference that Cornett knew he was in possession of LSD. Judge Easton also expressed concern that the majority created a new rule of law that differed from the longstanding practice of utilizing specific model jury instructions.

E. *Adams v. Commonwealth*, 2023-CA-1415-MR, 699 S.W.3d 757 (Ky. App. 2025). Opinion Affirming by Thompson, C.J.; Acree, J. (concurs) and Caldwell, J. (concurs).

The Court of Appeals affirmed an order of the circuit court which denied a motion to suppress evidence collected after a traffic stop. Appellant argued the traffic stop was

impermissibly prolonged when the officer patted down Appellant as soon as the stop was initiated. The Court held this pat down was proper because Appellant exited his car without permission from the officer and refused to get back in after being ordered to do so. A pat down for officer safety was reasonable under the circumstances. The Court also held the use of a search dog, which arrived a few minutes after the stop began, around the perimeter of the car did not impermissibly prolong the stop because the officer was inside his vehicle diligently working on the traffic citation while the dog performed its sniff search.

F. *Commonwealth v. Gambrel*, 2023-CA-0540-MR, 2024 WL 4714466 (Ky. App. Nov. 8, 2024). Opinion Affirming in Part, Reversing in Part, and Remanding by A. Jones, J.; Caldwell, J. (concurs) and Cetrulo, J. (concurs). Discretionary review granted 4/16/2025.

In an interlocutory appeal by the Commonwealth stemming from the trial court's grant of Appellee's motion to suppress evidence, the Court of Appeals affirmed in part, reversed in part, and remanded. The Appellee and two companions were sleeping in Appellee's vehicle in a Walmart parking lot when police were dispatched to check on the welfare of the occupants. After the occupants were determined to be sober and not in any distress, the officers asked them for identification. One of the passengers had warrants for his arrest and upon stepping out of the vehicle, an officer observed a plastic bag of methamphetamine in plain view. Following a search of the vehicle, Appellee was thereafter arrested and charged with several offenses, including first-degree trafficking in a controlled substance. The trial court subsequently granted Appellee's motion to suppress evidence, finding there was no reasonable articulable suspicion of criminal activity to justify the seizure of the occupants and the request for identification. The Commonwealth presented two arguments in its interlocutory appeal. First, the Commonwealth argued the trial court erroneously determined that Appellee and his passengers were seized within the meaning of the Fourth Amendment of the United States Constitution and Section 10 of the Kentucky Constitution. Second, the Commonwealth argued the trial court erroneously determined that the attenuation doctrine did not apply as an exception to the exclusionary rule in this case. The Court of Appeals affirmed the trial court on the first issue when it determined that a reasonable person in Appellee's position would not believe he was free to leave, pursuant to *U.S. v. Mendenhall*, 446 U.S. 544 (1980). However, the Court reversed the trial court on the issue of attenuation. The circumstances of this incident, under the test in *Utah v. Strieff*, 579 U.S. 232 (2016), justified attenuation because the warrants for Appellee's companion broke the causal link between the unlawful stop and the discovery of evidence. In reversing, the Court disagreed with the trial court that the police misconduct was flagrant, noting that police officers in Kentucky are permitted to ask for identification of vehicle passengers during a traffic stop under *Carlisle v. Commonwealth*, 601 S.W.3d 168 (Ky. 2020). At most, the officers in this case negligently conflated a welfare check with a traffic stop, a mistake which failed to rise to the level of flagrant police misconduct.

G. *Commonwealth v. Chapman*, 2023-CA-1221-MR, 2023-CA-1448-MR, 701 S.W.3d 566 (Ky. App. 2024). Opinion Reversing and Remanding by Eckerle, J.; Goodwine, J. (concurs) and Cetrulo, J. (concurs).

In this consolidated appeal, the Commonwealth challenged Perry Circuit Court orders granting Appellees' motions to suppress evidence seized as a result of law enforcement's effectuation of a valid search warrant based on suspicion of trafficking. The Perry Circuit Court concluded that law enforcement's forced entry into the subject residence, which occurred during the middle of the night when no occupant was present, constituted an "entry without notice," thereby implicating the requirements of KRS 455.180. The Court of Appeals reversed and remanded the Perry Circuit Court's orders, holding that law enforcement's execution of the search warrant passed constitutional muster because forceful entry occurred after law enforcement knocked on the dwelling door, announced police presence, and waited a sufficient amount of time for an occupant response. The Court of Appeals further held that KRS 455.180 was inapplicable, as law enforcement provided "notice" prior to effectuating the warrant through adequate knock and announcements.

H. *Clark v. Commonwealth*, 2024-CA-0502-MR, 2024 WL 5099073 (Ky. App. Dec. 13, 2024). Opinion Affirming by Easton, J.; Cetrulo, J. (concurs) and Combs, J. (concurs).

The Appellant sought, and the circuit court denied, expungement of his original first-degree rape and misdemeanor conviction resulting from the amendment of that charge to attempted sexual misconduct. The issue before the Court was whether an original felony charge, a misdemeanor conviction resulting from an amendment of that felony charge, or both may be expunged. First, the Commonwealth asked the Court to dismiss the appeal as the Appellant untimely filed his motion to alter, amend, or vacate the circuit court's original denial of expungement. However, the Court found the Commonwealth waived any objection to the lateness of the motion because it never brought the issue to the circuit court's attention. Instead, the Commonwealth responded to the merits of the motion and participated in an oral argument but did not object to the late motion verbally or in writing. Therefore, the Commonwealth waived the lack of particular case jurisdiction in these circumstances and did not give the circuit court the opportunity to decide any questions about the nature and timeliness of the motion. Next, it is recognized that the matter of expungement has been addressed piecemeal over the years by the legislature, and provisions in one chapter are not necessarily applicable in a different context in another chapter. In this case, two statutes apply to the Appellant's expungement request. KRS 431.076 generally deals with expungement of charges of which a defendant may have been acquitted or when the charges are dismissed with or without prejudice. However, this statute places a limitation in that the dismissal of a charge may not be "in exchange for a guilty plea to another charge." KRS 431.078 governs dismissal of misdemeanor convictions, prohibits expungement of a "sex offense," and does not allow expungement of a conviction which may serve to increase the penalty for a second or subsequent offense. The original rape charge in this case was not dismissed, but amended, in exchange for Appellant's pleading guilty to the amended charge of attempted sexual misconduct. As a result, the original charge cannot be expunged pursuant to KRS 431.076. Furthermore, the

Court concluded the attempted sexual misconduct conviction cannot be expunged regardless of the status of the original rape charge. It is a sex offense under KRS 431.078 as it has a sexual component, and Appellant admitted to sexual intercourse and pled guilty to attempted sexual misconduct. Although the legislature has indicated an intent that the phrase "sex offense" is to be given a broad definition, Appellant committed a misdemeanor sex offense as contemplated by KRS 431.078. Thus, the conviction is not eligible for expungement. The order of the circuit court was affirmed.

I. *Herald v. Commonwealth*, 2023-CA-1164-MR, 705 S.W.3d 531 (Ky. App. 2025). Opinion and Order Dismissing by Easton, J.; Acree, J. (concurs) and McNeill, J. (concurs).

This case involves an Appellant who became a fugitive after his probation was revoked, and he appealed the revocation decision. The Commonwealth filed a motion to dismiss this appeal based on the fugitive disentitlement doctrine ("FDD"), which "recognizes the principle that when a criminal defendant absconds and remains a fugitive during his or her appellate process, dismissal of the appeal is an appropriate sanction." *Commonwealth v. Hess*, 628 S.W.3d 56, 57 (Ky. 2021). The Court granted the Commonwealth's motion to dismiss. In light of the Kentucky Supreme Court's recent decision in *Anderson v. Commonwealth*, 706 S.W.3d (Ky. 2024), this case presented an opportunity to address a proper procedure for such motions. Specifically, in its motion to dismiss, the Commonwealth should clearly indicate that judicial notice is sought and explain the documents or other information offered as proof of the fugitive status. The Appellant should be able to question the accuracy of the information offered in his response to the motion to dismiss. Here, the Commonwealth asked for the Court to take judicial notice of the official notice of discharge when Appellant was released from prison on parole and a copy of the pending parole violation warrant, and Appellant responded. The Court concluded this is a sufficient and proper process for these cases. Continuing, the Court offered guidelines to improve the process for future cases. First, a better practice would be for the Commonwealth to offer an affidavit from an employee of the Department of Probation and Parole to authenticate and explain any documents offered and to provide any personal knowledge of an appellant's status. Likewise, an affidavit could be offered for an appellant if in fact there is some mistake about the identity of the fugitive or present fugitive status. Second, both the Commonwealth in its motion to dismiss and an appellant in their response to the motion would be well-served by offering relevant factual information. The Court in *Anderson* clarified that FDD does not involve individual case discretion but is rather an application of a legal rule to facts subject to *de novo* review. Thus, it depends upon factual circumstances which either do or do not sustain the application of FDD. *Anderson*, 2024 WL 5172358, at *4. In conclusion, the Court granted the Commonwealth's motion to dismiss, with the stipulation that such dismissal shall become final 90 days after entry of its order to allow Appellant a final opportunity to voluntarily end his fugitive status and to formally request by motion to vacate the order.

J. *Anderson v. Commonwealth*, 2021-CA-0692-DG, 706 S.W.3d 778 (Ky. App. 2025). Opinion Reversing by Thompson, C.J.; Caldwell, J. (concurs) and Combs, J. (concurs).

Anderson was found guilty of theft by failure to make required disposition of property (KRS 514.070), a Class A misdemeanor. Anderson failed to report to jail to begin service on his conviction, and a bench warrant was issued. Nevertheless, Anderson, through counsel, timely appealed his conviction, which the circuit court affirmed. Thereafter, Anderson sought discretionary review from the Court. The Commonwealth sought dismissal of the action under the fugitive disentitlement doctrine based on Anderson's ongoing fugitive status. Anderson subsequently surrendered himself to the jail. After denying the Commonwealth's motion, and granting discretionary review, the Court dismissed the appeal based on Anderson's status as a fugitive. Anderson sought review by the Kentucky Supreme Court, which reversed and remanded the case back to the Court of Appeals. The Kentucky Supreme Court held that because Anderson turned himself in, he was no longer a fugitive, and the Court of Appeals should review the case on the merits. On appeal, Anderson argued that KRS 514.070 did not apply to his actions and that he was given an illegal sentence due to lack of proof regarding the value of the property he allegedly failed to turn over. Anderson was charged with the Class A misdemeanor version of the statute which requires a showing that the property refused to be returned was valued at $500 or more, but less than $1,000. The Commonwealth failed to put on any evidence regarding the value of the property; therefore, there was insufficient evidence to convict Anderson of theft by failure to make required disposition of property under the statutory requirements. The Court concluded Anderson's conviction should be reversed due to the Commonwealth's failure to provide sufficient evidence. Additionally, the Court concluded double jeopardy is invoked, and Anderson cannot be retried because his conviction is being reversed for insufficient evidence.

K. *Spears v. Commonwealth*, 2023-CA-1493-MR, 710 S.W.3d 488 (Ky. App. 2025). Opinion Vacating in Part and Remanding by A. Jones, J.; Combs, J. (concurs) and McNeill (concurs).

In a direct appeal from the trial court's judgment following entry of Appellant's unconditional guilty plea, the Court of Appeals vacated the sentence in part. Appellant and the Commonwealth negotiated a late plea deal on the Friday before Appellant's trial date scheduled for Monday morning. The trial court was notified on Friday afternoon, but it declined to accept the negotiated plea on Monday morning because the jury venire had been assembled. Appellant was informed at that time the trial court would only accept a "naked" guilty plea without any assurances. After Appellant entered his guilty plea, the trial court sentenced him to the maximum concurrent sentence of three-years incarceration for Class D felony drug possession. Upon motion by the Commonwealth, the trial court also assigned the costs of the jury venire to Appellant as part of his sentence, in the amount of $862.50. Appellant presented two arguments on appeal. First, he contended the trial court erroneously failed to offer presumptive probation for his drug possession charge, as required under KRS 218A.1415(2)(d). However, counsel at oral argument acknowledged this issue was moot because Appellant had been released on parole and had

successfully completed his supervision by the Department of Corrections. Accordingly, the Court of Appeals declined to consider this issue because a decision could have no practical legal effect upon an existing controversy. For his second issue on appeal, Appellant contended the trial court erroneously imposed jury costs in a criminal case. The Court of Appeals agreed, noting that costs assessed a criminal defendant are authorized by statutes or local rules. The Court then held the portion of the trial court's judgment assessing jury costs against a criminal defendant lacked authority, either by statute or by rule, and Appellant was given no notice of a possible sanction for entering a late guilty plea. For these reasons, the Court vacated the portion of the judgment which imposed jury costs and remanded to the trial court for entry of a new judgment.

L. *Commonwealth v. Shroyer*, 2024-CA-0294-MR, 2025 WL 1271216 (Ky. App. May 2, 2025). Opinion Affirming by Caldwell, J.; Thompson, C.J. (concurs) and L. Jones, J. (concurs).

The Commonwealth challenged the dismissal of an indictment for possession of illicit drugs and paraphernalia pursuant to KRS 218A.133 (the Medical Amnesty Statute). After taking an individual to the emergency room for treatment of a drug overdose, Shroyer was arrested by police. According to the citation, police went to Shroyer's home "to do a knock and talk due to an overdose that took place at that house," and smelled marijuana and saw a clear bag with a white crystalline substance in plain view through an open window of a car when they arrived at Shroyer's house. Officers detained Shroyer when he exited his house and read him his *Miranda* rights. Shroyer allegedly consented to a search of his home and vehicle, and officers allegedly discovered marijuana, "spice," pills, drug paraphernalia, and a crystalline substance. Shroyer was indicted for alleged possession of methamphetamine, marijuana, synthetic drugs, and drug paraphernalia. Shroyer filed a motion to dismiss the indictment, asserting it violated KRS 218A.133 because he had taken the overdosing individual to the emergency room and because evidence for the charges was obtained due to the overdose and need for medical assistance. The trial court granted the motion to dismiss the indictment based upon its interpretation of KRS 218A.133, and the Commonwealth appealed. The Commonwealth asserted the evidence supporting the indictment was not obtained as a result of the drug overdose and need for medical assistance, but was obtained due to investigation of criminal activity which occurred at Shroyer's home, away from the hospital where the need for medical assistance was being addressed. Additionally, the Commonwealth argued the "cloak of immunity" provided under the statute did not extend to anything that occurred after Shroyer left the hospital. The Court of Appeals affirmed, concluding the trial court correctly interpreted the statute, and considered the intent behind the statute, which is to encourage individuals to seek emergency medical assistance during a perceived drug overdose. Plain reading of KRS 218A.133 simply requires that "the evidence for the charge or prosecution is obtained *as a result* of the drug overdose and need for medical assistance." (Emphasis added). Therefore, the overdose and need for treatment were part of the factors leading to the discovery of evidence. Since the statute must be liberally construed to achieve its purpose and its clear terms must be accorded their plain meanings, the Court discerned no error in the trial court's conclusions that

KRS 218A.133's requirements for immunity were met and that it must therefore grant the motion to dismiss. Furthermore, the Court of Appeals rejected the argument that the "cloak of immunity" automatically disappeared upon Shroyer leaving the hospital. KRS 218A.133(2)(c) does not necessarily require that the evidence be obtained at the time and place where medical assistance is sought. Instead, it simply requires that the evidence be obtained "as a result of the drug overdose and the need for medical assistance." It is not the Court of Appeals' job to add additional requirements to the statute.

M. *Commonwealth v. Embrey*, 2023-CA-0671-MR, 2025 WL 1349532 (Ky. App. May 9, 2025). Opinion Reversing and Remanding by McNeill, J.; Thompson, C.J. (concurs) and Easton, J. (concurs).

In 1996, Embrey was convicted of three counts of third-degree rape and sentenced to two years' imprisonment. He was placed on probation the same year but was later revoked in August 2000 and served out his sentence. In August 2022, Embrey was indicted for failing to register as a sex offender. He moved to dismiss the indictment, arguing he was no longer required to register. Specifically, he argued that because he was convicted in 1996, his registration period was governed by the 1994 version of the Sex Offender Registration Act (SORA), which only required 10 years of registration. The trial court agreed and dismissed the indictment. The Commonwealth appealed. The question on appeal was whether subsequent amendments to SORA apply to Embrey, making him a lifetime registrant. The Court of Appeals reversed and remanded, finding the 2017 and 2018 amendments contain no language limiting their applicability to new registrants or persons convicted, sentenced, or incarcerated for sex crimes after either version's effective dates.

N. *Gore v. Commonwealth*, 2023-CA-1107-MR, 2025 WL 1271325 (Ky. App. May 2, 2025). Opinion Reversing and Remanding by Lambert, J.; Cetrulo, J. (concurs) and Combs, J. (concurs).

The Court concluded statements given by a defendant who had not been informed of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), should have been suppressed because the totality of the circumstances showed a reasonable person in the defendant's position would not have felt free to leave. The Court noted the defendant was questioned for two hours in a moving police car containing two armed officers; the officers asked questions and made comments indicating their suspicions about the defendant's role in another person's shooting death from the beginning of the conversation; the officers did not tell the defendant the questioning would cease upon request; and an officer told the defendant he had to tell the complete truth if he wanted to go home that night. The Court also held the defendant's similar statements after being informed of his rights under *Miranda* should have been suppressed due to the officers' intentional, improper usage of the "question-first" investigatory technique.

VIII. EMPLOYMENT LAW

A. *Weafer v. Heritage Installations I, LLC*, 2023-CA-0665-MR, 709 S.W.3d 283 (Ky. App. 2024). Opinion Reversing and Remanding by McNeill, J.; Caldwell, J. (concurs) and Eckerle, J. (concurs).

This appeal arose from a wrongful discharge claim filed in Fayette Circuit Court. Weafer worked for Heritage installing doors and windows. He reported to his supervisor that his work trailer had defective brakes and brake lights which required repair. When the repairs were not made, Weafer refused to drive the vehicle and Heritage terminated his employment. In the amended complaint, Weafer alleged he was fired after refusing to abide by Heritage's directive to violate the law during his employment. Heritage filed a motion to dismiss pursuant to CR 12.02(f), which the trial court granted. This appeal followed. Kentucky is an at-will employment state, and employers may discharge employees "for good cause, for no cause, or for a cause that some might view as morally indefensible." *Firestone Textile Co. Div., Firestone Tire and Rubber Co. v. Meadows*, 666 S.W.2d 730, 731 (Ky. 1983) (citations omitted). However, there is a public policy exception to the at-will doctrine. Two specific exceptions have been recognized under the exception: (1) where the reason for discharge is due to the employee refusing to violate the law in the course of his employment; and (2) when the reason for discharge was the employee's exercise of a legislatively enacted right. *Grzby v. Evans*, 700 S.W.2d 399, 402 (Ky. 1985). This case concerns the first exception. The Kentucky legislature has made it clear that brakes and brake lights are required to operate a vehicle in Kentucky. KRS 189.090(1) and KRS 189.055. Safely operating a vehicle is clearly important public policy. An employment-related nexus is also evident here. Further, in granting the underlying motion to dismiss, the trial court relied in part on the Supremacy Clause, U.S. CONST. art. VI, cl. 2, holding that Weafer's claim was pre-empted by the Federal Aviation Administration Authorization Act. No Kentucky appellate court has addressed this issue, and there was no clear directive presented that stated federal law supersedes the relevant provisions of KRS Chapter 189 as it applies to this issue. Therefore, the Court reversed and remanded for further proceedings.

B. *Peterson v. Commonwealth*, 2023-CA-0655-MR, 708 S.W.3d 435 (Ky. App. 2025). Opinion Affirming by L. Jones, J.; Eckerle, J. (concurs) and Karem, J. (concurs).

Peterson brought this appeal from a judgment and sentence and restitution order convicting him of theft by failure to make required disposition of property, $10,000 or more, sentencing him to five years' imprisonment and court costs, and ordering him to pay restitution of $10,000 within six months of his release from incarceration. The Court of Appeals affirmed on all issues. The charge against Peterson stemmed from a $10,000 check that he accepted as a deposit for a roofing job for Phillip and Sheila Burden (Burdens). Peterson never performed the work or refunded the deposit. Peterson was indicted and later found guilty by a jury trial in April 2023.

First, Peterson argued the trial court erred by denying his motion for directed verdict of acquittal as the Commonwealth failed to present sufficient evidence that Peterson did not make the required disposition of the Burdens' $10,000 per KRS 514.070,

asserting he used the deposit to purchase materials for the roof repair. However, the Court concluded the trial court properly denied Peterson's motion for directed verdict as there was certainly sufficient evidence presented that Peterson obtained property ($10,000 check), upon an agreement to a known legal obligation to make a specified disposition (to purchase materials for the Burdens' roof), and that Peterson dealt with the property as his own (by depositing the Burdens' $10,000 check into a checking account over which Peterson had control), and Peterson failed to make the required disposition (by failing to provide materials for the repair of the Burdens' roof or return of their deposit). *See* KRS 514.070(1). Thus, a reasonable juror could believe beyond a reasonable doubt that Peterson was guilty.

Second, Peterson argued the trial court erred by not permitting him to introduce additional receipts showing the purchase of roofing materials. Peterson produced said receipts the morning of trial and asserted they "might" have been for the purchase of the Burdens' roofing materials and should not have been precluded from introduction. The trial court prohibited the introduction of the receipts as they had not been disclosed before the discovery deadline. The Court held the trial court did not abuse its discretion by excluding the untimely submitted receipts, which constituted cumulative evidence, as Peterson failed to comply with the discovery order. *See* RCr 7.24(11).

Third, Peterson argued that the Commonwealth committed prosecutorial misconduct during closing argument by stating that Peterson had not produced receipts to support his claim that he utilized the Burdens' $10,000 to purchase roofing materials for the roof replacement. Peterson also claimed the Commonwealth should not have made the reference, as Peterson was precluded from introducing receipts he produced the morning of trial. The Court rejected Peterson's argument. The receipts introduced at trial were as vague as the receipts produced during discovery, and the Commonwealth's reference to Peterson's failure to produce receipts was intended only to show the insufficiency of the receipts Peterson did produce which did not support Peterson's claim that he used the Burdens' $10,000 to purchase materials for their roof. And, as admitted by Peterson, the receipts produced the morning of trial were no more specific than those previously produced. As counsel is granted wide latitude in closing argument and considering the overall fairness of the trial, the Court rejected Peterson's contention the Commonwealth engaged in prosecutorial misconduct.

Fourth, Peterson asserted the trial court erred by ordering him to pay restitution of $10,000 within six months of his release from incarceration, stating the trial court was required to make findings of fact regarding his financial situation or ability to pay before ordering restitution. Peterson claimed he is a poor person under Kentucky law, and the imposition of restitution against him constitutes an illegal sentence that is jurisdictional and does not require proper preservation. Peterson acknowledged he failed to preserve this issue for appellate review. He further argued it is "manifest injustice" to impose restitution upon him without first having a hearing to determine his financial situation and ability to pay. However, restitution is a proper component of a judgment imposing a final sentence, and it is mandatory under KRS 532.032, and is not an illegal sentence *per se*. *Jones v. Commonwealth*, 382 S.W.3d 22, 28 (Ky.

2011). Furthermore, no palpable error or manifest injustice existed as to the trial court's procedure or lack of findings of fact regarding Peterson's financial situation or ability to pay. The protections illustrated by the *Jones* court in implementing the mandate of KRS 532.032 to protect due process and achieve substantial justice were exercised by the trial court. *See Jones*, 382 S.W.3d at 32. Because a defendant's indigency has no bearing on the imposition of restitution, it is relevant only when setting the amount of any partial payments, the frequency of payments, and any sanctions for non-payment. These are matters that often cannot be determined while a defendant is still incarcerated on the underlying sentence. Also, nothing precludes the trial court from conducting a subsequent hearing to determine Peterson's ability to pay upon his release from prison, and nothing precludes Peterson from seeking such a review. *See* KRS 532.033(6)-(7). This matter is clearly placed within the authority of the trial court by both the legislature and the Supreme Court. There has been no manifest injustice and no error, palpable or otherwise.

Fifth, Peterson asserted the trial court erred by ordering him to pay court costs as he contends to be a poor person. Although he was adjudged a needy person eligible for the appointment of a public defender, Peterson was not deemed a poor person exempt from paying court costs. The Court did not believe the trial court erred by imposing court costs upon Peterson, as he did not raise the issue of his status as a poor person, and it could not conclude that a sentencing error occurred. Finally, Peterson argued he is entitled to a new trial under the cumulative error rule, which provides that "multiple errors, although harmless individually, may be deemed reversible if their cumulative effect is to render the trial fundamentally unfair." *Brown v. Commonwealth*, 313 S.W.3d 577, 631 (Ky. 2010). In this case, the Court found no single error and certainly no cumulative error.

IX. ESTATE LAW

Estate of Grisez v. Erie Life Insurance Company, 2022-CA-0451-MR, 2024 WL 3836617 (Ky. App. Aug. 16, 2024). Opinion Affirming by Acree, J.; Goodwine, J. (concurs) and Lambert, J. (concurs).

After Katie Grisez died in a utility terrain vehicle (UTV) accident, Appellee insurer obtained the damaged UTV and eventually sold it. The Appellant, the Estate of Grisez, utilizing the private right of action statute, KRS 446.070, alleged that the Appellee's actions violated KRS 524.100 prohibiting tampering with evidence. The circuit court granted Appellee's CR 12.02(f) motion to dismiss for failure to state a claim because, despite taking the complaint's allegations as true, *Monsanto Co. v. Reed*, 950 S.W.2d 811 (Ky. 1997), required dismissal. On discretionary review, *Monsanto* reversed the Court of Appeals opinion holding "the tort of spoliation is consistent with the statutory and common law of this jurisdiction." *Reed v. Monsanto*, 93-CA-2125-MR, 1995 WL 96819 (Ky. App. Mar. 10, 1995). The Supreme Court in *Monsanto* reversed the Court of Appeals' "creation of a new cause of action for 'spoliation of evidence' . . . [preferring] to remedy the matter through evidentiary rules and 'missing evidence' instructions." 950 S.W.2d at 815. However, Appellant argued, correctly, that *Monsanto* never mentions the private right of action statute and seems only to address the common law basis for recognizing the tort. The Court of Appeals in this case found *Monsanto* to have implicitly rejected the statutory basis for the tort and postulated a rationale, as

follows. For a private right of action to present a viable claim, "the person damaged [must be] within the class of persons the statute intended to be protected." *Hargis v. Baize*, 168 S.W.3d 36, 40 (Ky. 2005). Citing *Swan v. Commonwealth*, 384 S.W.3d 77, 91 (Ky. 2012), the Court of Appeals in *Estate of Grisez* held that "sanctions and remedies for spoliation of evidence, whether statutory or procedural, do not serve to protect one party or another so much as to protect and serve 'the interests of justice.'" Consequently, the Court of Appeals affirmed the circuit court's interpretation of *Monsanto* and its dismissal of Appellant's spoliation of evidence claim as not recognized in Kentucky jurisprudence.

X. FAMILY LAW

A. *Link v. Link*, 2023-CA-1073-MR, 704 S.W.3d 698 (Ky. App. 2024). Opinion Vacating and Remanding by Karem, J.; Cetrulo, J. (concurs) and Goodwine, J. (concurs).

This appeal was brought from an order denying Appellant's petition for custody of his ex-wife's biological son and from a restraining order. When Appellant married Appellee, her son was approximately 18 months of age, and his biological paternity was unknown. Appellant and Appellee were married for over nine years and had a daughter together. Appellant acted as a father to both children, providing financial support and caretaking. The son was not informed that Appellant was not his biological father. After Appellant and Appellee divorced, Appellant served as the caretaker of both children on an alternating weekly basis. After over three years of this arrangement, Appellee ended the son's contact with Appellant. He petitioned for joint custody. The circuit court dismissed his petition, on the grounds that he did not have standing and that Appellee mother had not waived her superior parental rights. The circuit court also entered a restraining order banning Appellant from any communication or contact with Appellee or her son and from posting on social media about Appellee, her son, or the proceedings. The Court vacated the order, holding Appellant had standing under KRS 403.800(13) because he had equal time sharing of the son for more than six months preceding the commencement of the custody action. The Court further held the circuit court's findings regarding waiver were inadequate as a matter of law for failing to recognize the doctrine of partial waiver as set forth in *J.S.B. v. S.R.V.*, 630 S.W.3d 693 (Ky. 2021) and *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010), *as modified on denial of reh'g* (Aug. 26, 2010) (adopting the factors listed in *Heatzig v. MacLean*, 664 S.E.2d 347 (N.C. App. 2008)). The case was remanded for the circuit court to make findings under the *Heatzig* factors. The Court vacated the restraining order for failure to comply with CR 65 because its intent was unclear, it had no termination date, and because it contained very broad restrictions on Appellant's actions, including future restraints on expression, which implicated Appellant's free speech rights.

B. *Adair v. Emberton*, 2023-CA-1100-MR, 694 S.W.3d 52 (Ky. App. 2024). Opinion Reversing and Remanding by Cetrulo, J.; Goodwine, J. (concurs) and Karem, J. (concurs).

This is an appeal from an order granting expanded parenting time to a biological mother in a custody action. The paternal grandmother has had custody of the child since birth and appealed from the order increasing mom's parenting time after a

hearing that did not fully comply with the statutes or prior court rulings. In this action in Jefferson County, the family court had previously appointed a friend of the court ("FOC") to assist with this case. The court conducted a hearing in June 2023 during which the grandmother custodian was not initially admitted into the proceedings through the Zoom link, although present. The court had informal discussions with the FOC, mom, and her attorney for nearly eight minutes before the grandmother was admitted. The court appeared to be preparing its order increasing mom's parenting time prior to the grandmother's presence. Once she was admitted into the proceedings, the court restricted grandmother from cross-examining witnesses, including the FOC. The family court further relied upon the unsworn recommendations of the FOC to increase parenting time, even though there was no written report, no apparent interview of mental health counselors involved with the child, and the FOC had never interviewed the child, in violation of KRS 403.300. Previous orders of the court had indicated that motions to modify would not be heard until the FOC met with the child and provided a written report, and that had not yet occurred. There was also no indication in the order or on the record that the family court considered the best interests of the child as required before a modification of parenting time pursuant to KRS 403.320. The ruling of the Jefferson Family Court was reversed.

C. *A.S. v. M.R.*, 2024-CA-0245-ME, 694 S.W.3d 403 (Ky. App. 2024). Opinion Reversing and Remanding by Easton, J.; Caldwell, J. (concurs) and Combs, J. (concurs).

In an appeal from the family court's findings that A.S. was neglectful, A.S. argued: (1) that the court abused its discretion because its findings were clearly erroneous; and (2) the court violated the separation of powers doctrine when it did not allow the assistant county attorney to drop the prosecution against A.S. This appeal originated as a DNA petition involving four children (Children) and four adults (Mother, A.S., Father, and Uncle), who all lived in the same residence. The initial DNA petition alleged that Mother was arrested for assaulting one of the Children, but the petition named all four adults as parties responsible for the abuse and neglect of the Children. The case was scheduled for adjudication in February 2023, where Mother appeared with counsel and agreed to stipulate to neglect. In the criminal action, Mother had entered a guilty plea to assault 4th. The Commonwealth requested the court dismiss the petition against Father, Uncle, and A.S. The Commonwealth stated it was not pursuing charges against Uncle and A.S. due to lack of forensic evidence and requested the petition against them to be dismissed. The court denied the request due to the allegations made in the amended petition. In September 2023, the parties moved to enter stipulations. Mother would stipulate to risk of neglect, while A.S. and Uncle agreed to stipulate that the court could have made a finding for risk of emotional abuse, and they would be informally adjudged. They also agreed to not be caretakers of the Children for a one-year period. A week later, the court rejected the parties' stipulations. Mother had to stipulate to abuse due to her guilty plea to assault 4th. The court determined that due to the living situation, all parties had to stipulate to abuse or the case would be set for a hearing. The parties requested a hearing. Two weeks later, the adjudication hearing was held. The Commonwealth did not call any witnesses. Mother testified she threw a medicine bottle at a pet animal, accidentally striking one of the Children, which caused a red mark and small bruise. A.S. was

present at the time of the incident. There was no mention of Father and Uncle. In its standardized adjudication order and attendant written findings, the court found that the Child was hit under A.S.'s direct supervision, and the Commonwealth met its burden of proof for a finding of neglect against A.S. A disposition hearing was held in January 2024, where A.S. was ordered to have no contact with the Children.

The Court of Appeals noted the filing of an action in court connects the executive and judicial branches, and a family court is not required to acquiesce in the county attorney's recommendations without question. However, the prosecutor is the most knowledgeable as to whether a pending prosecution should be terminated, and "[t]he exercise of discretion with respect to the termination of pending prosecutions should not be judicially disturbed unless clearly contrary to manifest public interest." *See generally Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004). In this case, the Bullitt County Attorney's Office joined A.S. in both the argument that the family court erred in ignoring its prosecutorial discretion in presenting cases and in A.S.'s contention there was no evidence to support a finding of neglect against her. The family court failed to have a hearing on the Commonwealth's motion to dismiss as contemplated under *Hoskins*. Furthermore, there was little testimony during the adjudication hearing. With that little testimony, the court made a finding that A.S. had neglected the Children based on her being in a supervisory role, failing to protect the Children, and not reporting the incident. The court's findings in this regard were clearly erroneous. The Bullitt Family Court's orders were reversed and remanded with direction to dismiss the petitions against A.S.

D. *Barnette v. Evans*, 2023-CA-1159-MR, 697 S.W.3d 749 (Ky. App. 2024). Opinion Reversing and Remanding by Karem, J.; Cetrulo, J. (concurs) and Goodwine, J. (concurs).

Mother filed a negligence action against the Cabinet for Health and Family Services ("Cabinet"), the Department for Community Based Services ("DCBS"), and DCBS service workers for the death of her three-year-old son. Mother and putative father were incarcerated for various drug offenses throughout most of the child's life and the court granted guardianship to Mother's sister. On the day of the child's death, the child's caretaker left him at home in the care of her 11-year-old son when a fire broke out. Only the 11-year-old survived the fire. The trial court granted summary judgment to all defendants finding they were shielded by qualified immunity. On appeal, Mother argued the court should have permitted additional discovery, made more factual findings, and ruled on her motion to file a second amended complaint. The Court held the trial court gave the parties ample time for discovery; thus, the ruling on summary judgment was not premature. However, the Court remanded the case back to the trial court to issue a ruling in accordance with the standards described in *Meinhart v. Louisville Metro Government*, 627 S.W.3d 824, (Ky. 2021). Lastly, the Court found Mother failed to exercise reasonable diligence to obtain a ruling on her motion to file a second amended complaint before it became a moot issue.

E. *Jolly v. Jolly*, 2023-CA-1189-MR, 698 S.W.3d 427 (Ky. App. 2024). Opinion Affirming by Cetrulo, J.; L. Jones, J. (concurs) and McNeill, J. (concurs).

This is an appeal from a denial of CR 60.02 relief by the Bourbon Family Court. The judgment Appellant sought to set aside was a decree of dissolution and incorporated separation agreement in an uncontested divorce proceeding. Appellant argued the agreement was unconscionable, and the family court's failure to appoint a guardian *ad litem* to represent him when he was incarcerated required setting it aside. The Court of Appeals noted CR 17.04 does require appointment of a guardian when a prisoner fails or is unable to defend an action unless that right to legal representation is waived. Here, however, Appellant did waive his right to counsel, agreed to an uncontested dissolution process, and knowingly signed an agreement. He did not fail to defend but waived his defenses. Further, the family court correctly considered the grounds asserted for CR 60.02 relief and did not abuse its discretion in refusing to set aside the parties' agreement. The family court did not find the agreement unconscionable as it mirrored the parties' prior agreement in the unrelated criminal action, where Appellant did have counsel.

F. *T.P. v. Cabinet for Health and Family Services*, 2024-CA-0402-MR, 697 S.W.3d 758 (Ky. App. 2024). Opinion Affirming by Cetrulo, J.; L. Jones, J. (concurs) and McNeill, J. (concurs).

This is an appeal from a judgment terminating the parental rights of a mother to her daughter. Upon evidence the mother had created the appearance of health problems in her child that were non-existent, the Cabinet took custody of the child and removed her from the mother's care and control over medical decisions. The child's extensive laundry list of health problems then quickly and completely vanished. The Cabinet filed to terminate the mother's rights after the child had been in foster care for more than two years. The mother continued to deny this medical abuse had occurred, but she did not testify. At trial, the family court considered medical records, testimony of experts, the social worker, and therapist for the child and noted the astonishing improvement in the child's health since being removed from the mother's custody. The family court addressed all statutory prerequisites in finding that termination of parental rights was in the best interest of the child. The mother argued the Cabinet had failed to make reasonable efforts to provide services necessary for reunification. The testimony at trial was that there were very few practitioners in the Commonwealth qualified to treat factitious disorder by proxy. However, the family court noted that with the mother's continued denial of responsibility for causing her child harm, it was unclear what other services the Cabinet could have offered while protecting the child. The Court affirmed the Scott Family Court.

G. *W.H.J. v. J.N.W.*, 2023-CA-1474-ME, 705 S.W.3d 55 (Ky. App. 2024). Opinion Affirming by Eckerle, J.; Goodwine, J. (concurs) and McNeill, J. (concurs).

Father lost custody of Child and was ordered to have no contact with Child when he failed to comply with the family court's directions ordering him to complete substance abuse and mental health assessments and attend parenting clinics.

Instead, Father turned to crime. He was ordered to pay child support and failed to regularly do so. Mother was re-married, and Stepfather filed a petition to adopt Child, which was granted by the family court. Father appealed the adoption judgment, claiming he had never been advised of any right to appointed counsel. The Court reversed due to the family court's inadequate explanation of the right of an indigent person to appointed counsel. On remand, the family court denied Father's petition for appointed counsel as he made $70,000 per year and was not indigent under KRS Chapter 31. A second trial took place over Father's motion for a continuance, and the family court granted the adoption a second time. Father again appealed. Father first argued the family court denied him due process by declining to appoint counsel because there is a difference in appointing counsel in adoption and termination of parental rights proceedings; however, his argument was because termination of parental rights and adoption proceedings allow for appointed counsel for indigent parties if they can show they are indigent. On review for manifest injustice only, the Court found none because Father was not eligible for the appointment of counsel in the adoption proceeding as he did not qualify as an indigent person. Additionally, the family court's findings of fact, conclusions of law, and judgment of adoption were supported by the evidence presented at trial. The Court affirmed the family court.

H. *Bentley v. Etherton*, 2023-CA-0560-MR, 708 S.W.3d 460 (KY. App. 2024). Opinion Affirming by Acree, J.; Easton, J. (concurs) and Goodwine, J. (concurs).

A child's mother shot and killed his father and later pleaded guilty to murder. The child's maternal great aunt was awarded temporary custody in a dependency, neglect, and abuse (DNA) action. The child's paternal grandparents filed the instant action seeking visitation. The grandparents also sought to intervene in the DNA action. In the DNA action, the family court never expressly ruled on the grandparents' motion to intervene but awarded them visitation and did rule on various motions filed by the grandparents. The great aunt filed a motion for permanent custody in the DNA action, which was granted after a hearing without the grandparents' participation. This was in 2018. In 2021, the grandparents filed a motion for custody in the instant action. After a hearing, the family court maintained the status quo, with the child remaining in the great aunt's custody and the grandparents receiving visitation. The grandparents appealed, arguing: (1) their due process rights were violated as the family court never "officially" granted their motion to intervene and then adjudicated the great aunt's motion for permanent custody without their participation; and (2) the court-appointed friend of the court (FOC) failed to perform a sufficient investigation. The Court concluded the grandparents' first argument was not properly before it, as the grandparents had not appealed any orders in the DNA action, and the record was "unrefuted" that their counsel of record had received notice of the hearing on the great aunt's motion for permanent custody. The Court agreed with the family court the grandparents' objections regarding the DNA action were "untimely" and "filed in the wrong action." Regarding the grandparents' second argument, the Court observed the grandparents were confusing the duties of a court-appointed friend of the court in custody actions, whose duties are governed by KRS 403.290 and KRS 403.300, with a fiscal court created friend of the court appointed pursuant to KRS 403.090. The Court concluded the grandparents had not alleged the FOC failed to satisfy any mandatory duty and had also failed to assign any error to the family court

relative to the FOC's report. Finding no reversible error, the Court affirmed the family court's order maintaining the status quo.

I. *Van Gansbeke v. Van Gansbeke*, 2023-CA-0942-MR, 700 S.W.3d 263 (Ky. App. 2024). Opinion Vacating and Remanding by Acree, J.; Easton, J. (concurs) and Goodwine, J. (concurs).

Following their divorce, the parents of twin girls repeatedly clashed over custody and parenting time of the children. The father sought to revisit those issues, particularly a requirement that his visitation be supervised, and the family court appointed a friend of the court (FOC) to investigate and make a report. A hearing was scheduled, and the father requested the children's therapist to furnish him with dates for a deposition. The therapist claimed deposing her would not be in the best interest of the children. Ten days before the hearing, the FOC filed his report, identifying the therapist among those he interviewed. Prior to the hearing, the family court entered a protective order disallowing the father from cross-examining the therapist "by deposition or otherwise," citing the best interest of the children. Following the hearing, the father filed a motion to strike the FOC's report and testimony because he was denied a meaningful opportunity to challenge the FOC's sources. The family court denied the motion and declined to remove the requirement the father's visitation be supervised. The father raised a number of issues on appeal, but the Court focused on the family court's decision to prohibit the father from cross-examining the children's therapist. As the Court explained, KRS 403.300 contains a number of due process protections related to the admission of reports by court-appointed investigators (such as the FOC) into evidence. Although the Court rejected the father's arguments related to the timely disclosure of the report and underlying information, the Court concluded the family court's protective order precluding cross-examination of the children's therapist contravened KRS 403.300(3), as that provision provides a due process right to cross-examine an investigator's sources. The Court went on to reject the argument the father waived his right to cross-examine the therapist, as KRS 403.300(3) makes clear the right cannot be waived prior to the hearing. The Court also found no waiver after the hearing commenced because a waiver "cannot be presumed from a silent record" and because the father challenged the FOC's report and testimony during and after the hearing. The Court concluded the family court erred in denying the father's challenges. Given the family court's error, the Court concluded additional arguments were moot and vacated and remanded for a new hearing.

J. *Harney v. Harney*, 2022-CA-1202-MR, 701 S.W.3d 575 (Ky. App. 2024). Opinion Affirming in Part, Reversing in Part, and Remanding by Taylor, J.; Combs, J. (concurs) and L. Jones, J. (concurs).

The parties have two children, and a decree of dissolution incorporating the marital settlement agreement (MSA) was entered on July 22, 2015. At this time, the parties agreed to Ashley's being awarded sole custody of their children and Stuart (Austin) was ordered to pay child support of $422 per month to Ashley. Austin's child support was subsequently increased two more times. By order entered June 27, 2022, the family court granted Austin's motion to modify custody and awarded the parties joint

custody of their two children. Therein, the family court determined Austin had a child support arrearage of $2,346.45 but ordered that no interest shall accrue because no prior order included interest as part of the arrearage calculation, and the family court granted Austin's request to claim one of the children for the 2021 tax year. Upon motion made by Ashley, the family court entered an order on September 20, 2022, denying to alter, amend, or vacate the 2021 child tax exemption decision, but did alter its order regarding the accrual of interest on the child support arrearage, determining Ashley was entitled to interest at the legal rate on each payment until paid in full. A hearing was subsequently held on competing motions to modify child support, and pursuant to the family court's December 7, 2022 order, the county attorney's office determined Austin had a child support arrearage of $13,109.20, and the interest on the arrearage was $1,573.10. Both parties disagreed with the county attorney's calculation, and by order entered May 12, 2023, the family court amended its December 7, 2022, order to provide that "interest is to be awarded from May 1, 2015[,] to January 1, 2018[,]" and that for the same period, Austin owed interest of $8,570.35. This appeal followed.

Ashley (Appellant), first contended the family court erred by determining she was not entitled to prejudgment interest on all of Austin's (Appellee) child support arrearage, asserting the family court erroneously determined she was only entitled to prejudgment interest on the arrearage that accrued from May 1, 2015, through January 1, 2018. While it is established that interest generally begins to accrue once a child support payment becomes delinquent, whether to award interest on a child support arrearage is within the sound discretion of the family court. *Gibson v. Gibson*, 211 S.W.3d 601, 611 (Ky. App. 2006). The *Gibson* court identified two factors for consideration when weighing the inquiry of requiring interest on a child support arrearage, including whether there was an attempt by the obligor to provide "any services to the children," and whether the obligor "made any attempt to substantially comply with the trial court's child support order." *Id*. The Court of Appeals concluded the family court properly considered the applicable factors, and it was not an abuse of discretion to determine it would be inequitable to require Austin to pay interest on the unpaid child support arrearage that accrued after January 1, 2018, because the record reflects that Austin substantially complied with the child support order, satisfying the second *Gibson* factor. Second, Ashley asserted the family court erred by not awarding her interest on attorney's fees that Austin was ordered to pay per the parties' MSA, stating KRS 360.010 entitles her to prejudgment interest at the statutory rate of 8 percent. The Court concluded the family court erred by not ordering that the award of attorney's fees would bear the applicable statutory interest at eight percent. Therefore, the Court reversed and remanded for the family court to calculate the interest owed on the attorney's fees. Third, the Court affirmed the family court's ruling that Austin was entitled to receive a credit against his child support arrearage, which represented his overpayment of childcare costs. The family court's credit to Austin for child support arrearage was not tantamount to a modification of child support, and is only a reduction, as the Court of Appeals previously explained in *Olson v. Olson*, 108 S.W.3d 650 (Ky. App. 2003). Finally, the Court found no error in the family court's award to Austin the child tax exemption for the 2021 tax year and affirmed its decision thereto.

K. *C.M. v. Cabinet for Health and Family Services*, 2023-CA-1459-ME, 2023-CA-1460-ME, 2023-CA-1461-ME, 2023-CA-1462-ME, 2023-CA-1463-ME, 2023-CA-1464-ME, 2023-CA-1465-ME, 2023-CA-1466-ME, 710 S.W.3d 18 (Ky. App. 2024). Opinion Affirming by Goodwine, J.; Eckerle, J. (concurs) and McNeill, J. (concurs).

The Court granted a motion to publish this opinion consisting of eight consolidated appeals. Mother and Father (Appellants) appealed the family court's orders committing the four minor children to the Cabinet's custody. The Court affirmed the family court's rulings. First, Appellants argued the family court's findings of neglect against Mother were clearly erroneous and not supported by substantial evidence. Appellants cited *K.H. v. Cabinet for Health and Family Services*, 358 S.W.3d 29, 32 (Ky. App. 2011), wherein the appellate court found the Cabinet was required to prove the mother's refusal to sign and abide by a prevention plan exposed her children to a risk of harm from the father. However, the Court distinguished the present matter from *K.H.* in that many additional facts supported the family court's finding of neglect against Mother. Mother's failure to follow the prevention plan was not the sole reason for the family court's finding of neglect. Second, Appellants argued the family court abused its discretion by declining to admit Snapchat photographs as evidence to impeach a witness's credibility. Appellants' argument fails because the witness, S.D., lacked the necessary personal knowledge of the contents of the photographs to authenticate them. While S.D. observed the victim using the social media messaging platform one day during the relevant time period, S.D. was unable to recall the date on which she took the photographs, did not observe the contents of the messages where they were allegedly created, who sent the messages, who received the messages, or who was the account's owner. Without any identifying information, the family court could not confirm the messages were associated with the victim as alleged. The Court affirmed the family court's rulings.

L. *Allgeier v. Wagner*, 2024-CA-0496-MR, 704 S.W.3d 686 (Ky. App. 2025). Opinion Affirming in Part, Vacating in Part, and Remanding by Combs, J.; Jones, J. (concurs) and McNeill, J. (concurs).

This case arose from a dissolution of marriage. After entry of the order of dissolution by the Jefferson Family Court, Allgeier filed a civil lawsuit against her former spouse (Wagner) in Jefferson Circuit Court. She sought recovery of damages based on her allegations of Wagner's various torts committed against her, including misappropriation of revenue from a business awarded to her in the property settlement, malicious interference with her exercise of custody with their children, and the tort of outrage in connection with these claims. Wagner filed a motion to dismiss, which the circuit court granted. In its review, the Court of Appeals determined the circuit court correctly determined jurisdiction of these matters should lie with the Jefferson Family Court because Allgeier's complaint involved claims arising from the former marriage. The Court affirmed that portion of the judgment. However, the circuit court dismissed the complaint in granting Wagner's motion to dismiss. The Court held that procedurally, the proper ruling would be transfer of the matter to the Family Court rather than dismissal. Accordingly, the Court reversed the order of dismissal and remanded for entry of an order transferring the case to the Jefferson Family Court.

M. *Basham v. Basham*, 2023-CA-1436-MR, 710 S.W.3d 1 (Ky. App. 2025). Opinion Affirming by A. Jones, J.; Combs, J. (concurs) and McNeill, J. (concurs).

In a direct appeal from the family court's findings of fact, conclusions of law, and judgment dissolving the parties' marriage, the Court of Appeals affirmed. The chief issues in this case revolved around Appellant's repeated violations of the family court's discovery orders and the resulting sanctions. Appellant presented four arguments on appeal. First, she contended the family court erred in finding she failed to provide sufficient discovery and in issuing its contempt order. Second, she argued the family court abused its discretion by denying her the opportunity to fully testify about her monthly expenses in support of her maintenance claim. Third, she asserted the family court improperly denied her request for maintenance. Finally, she maintained the family court erred in rejecting her claim that the parties' residence was her nonmarital property.

The Court of Appeals rejected Appellant's arguments. First, Appellant's failures to comply with discovery orders were clearly willful and in bad faith. Further, the family court believed Appellant's failure to respond to discovery requests operated to the prejudice of Appellee. The Court held the family court's sanctions, prohibiting her from introducing withheld documents and evidence in support of her claims, was a measured application of sanctions under CR 37.02(2)(b), rather than an arbitrary refusal to consider evidence. The Court also rejected Appellant's claim that allowing Appellee to draft findings of fact was inappropriate, as the mere adoption of one party's proposed findings does not constitute reversible error, unless it is shown the court failed to exercise independent judgment. The family court exercised independent judgment in this case, evidenced by the fact that it amended Appellee's proposed findings. Next, the Court also rejected Appellant's argument the family court should have awarded her some maintenance based on the limited evidence available. The limited evidence was insufficient for the family court to make a reasoned determination regarding whether Appellant had sufficient assets to meet her reasonable needs, and the lack of evidence was attributable to her own conduct and the resulting sanctions. Parties cannot benefit from withholding required disclosures. Furthermore, Appellant did not ask the family court to allow her to submit the disputed evidence by avowal. The Court held that, without knowing what evidence Appellant would have adduced, there was no way for her to demonstrate an entitlement to maintenance, and if so, what amount would have been reasonable. Finally, the Court held that despite a quitclaim deed being in Appellant's name, the evidence supported the family court's classification of the family home as marital property. Both parties had contributed to the mortgage using marital funds for decades. Furthermore, the quitclaim deed itself was not intended as a gift of Appellee's marital interest to Appellant. It was instead an attempt to protect the marital residence from the collection efforts of Appellee's potential creditors.

N. *S.S. v. A.L.B.*, 2024-CA-1121-ME, 711 S.W.3d 319 (Ky. App. 2025). Opinion Affirming by Eckerle, J.; Acree, J. (concurs) and Combs, J. (concurs).

In 2022, the Cabinet filed petitions to terminate the parental rights of S.S. ("Father") and J.F.C. ("Mother"). At the time of the hearing in 2024, both parents were incarcerated. Mother agreed to a voluntary termination of her parental rights. Father had been incarcerated for most of the children's lives, and he never had custody of or supported the children in any manner. He was also facing significant, additional federal prison time. The family court ultimately granted the Cabinet's petition to terminate Father's parental rights. The Court of Appeals concluded there was clear and convincing evidence to affirm. Although a parent's incarceration alone is insufficient, the family court properly considered Father's repeated incarcerations, failure to support the children, and lack of reasonable expectation of improvement in circumstances given the age of the children and his lengthy incarceration. However, the Court had significant concerns about the manner in which the hearing was conducted. When the Cabinet called Father to testify, Father objected, citing his Fifth Amendment privilege. The family court overruled the objection and required him to testify. While the Court condemned compelling his testimony, the Court acknowledged the family court carefully reviewed objections as to specific questions that could have even remotely implicated that right. And while Father's trial counsel moved to strike the testimony, Father's appellate counsel relied on the testimony to challenge the termination. Notably, Father's testimony was not determinative of the decision to terminate parental rights. Consequently, given the innocuous nature of the testimony, the Court declined to reverse. However, the Court cautioned strongly against compelling this type of testimony in the future, particularly given that the Cabinet bears the burden of proof, which is not typically met by calling the opposing party as a witness.

O. *Hogle v. Hogle*, 2024-CA-0731-ME, 710 S.W.3d 482 (Ky. App. 2025). Opinion Affirming by McNeill, J.; A. Jones, J. (concurs) and Combs, J. (concurs).

Kevin appealed from a DVO entered on behalf of his spouse, Stephanie Nicole (Nicole). Kevin claimed the family court erred because there was insufficient evidence to support the DVO's entry and the family court erred by not transferring the matter from Division 6 to Division 5 of the Kenton Circuit Court, where the parties' dissolution action was assigned. The Court of Appeals affirmed the family court. First, the Court of Appeals held the family court did not err in its analysis of whether domestic violence occurred and could occur again in the future. The family court considered the volatile nature of the parties' relationship leading up to the incident cited in the petition and Kevin's surveillance of Nicole through the minor children. Additionally, persistent text messages and the use of a private investigator were cumulative acts by Kevin that indicated domestic violence may occur again. The family court was also within its discretion to find Kevin's testimony not credible. Second, according to the Kenton County Family Local Rules of Practice, transfer of the DVO from Division 6 to Division 5 was not mandatory, given that the dissolution action was in its earliest stages (it had not proceeded past Kevin's filing an answer to the petition). This is in accordance with Kentucky case law because the DVO was the

first order entered in the Kenton Family Court between the parties, which means no fractionalization of jurisdiction occurred.

P. *White v. Fowler*, 2024-CA-0322-MR, 2025 WL 1271330 (Ky. App. May 2, 2025). Opinion Vacating and Remanding by Karem, J.; Thompson, C.J. (concurs) and Taylor, J. (concurs).

Following the denial of grandparent visitation by family court, grandparents appealed. Grandparents additionally appealed the award of attorney fees and the trial judge's refusal to recuse. The Court found there was no basis for the trial judge to award attorney fees and vacated the order. Additionally, the Court held the trial judge failed to adequately address the grandparents' concern regarding *ex parte* communications. The trial judge was therefore recused from acting as presiding judge in the litigation below pursuant to Rule 2.11 of Canon 2 of the Code of Judicial Conduct. Lastly, the Court held it was improper for the attorney appointed as friend of the court to also represent the father of the children thereby tainting the proceedings. She, too, was precluded from further participation in the litigation below or on appeal. Thus, the Court vacated the trial judge's order regarding grandparent visitation and remanded for a new hearing.

Q. *Whitley v. Shelton*, 2024-CA-0860-MR, 2025 WL 1416212 (Ky. App. May 16, 2025). Opinion Affirming by Cetrulo, J.; Acree, J. (concurs) and Taylor, J. (concurs).

This appeal addressed KRS 405.021, the grandparent visitation statute. The Court concluded the language of that particular statute is limited to biological grandparents, unless expanded by the legislature. However, in this case, the "lack of standing" of a step-grandmother who was awarded visitation was not timely raised. Lack of standing is a defense that must be raised in a timely manner or will be considered waived.

R. *S.H. v. Cabinet for Health and Family Services*, 2024-CA-0617-MR, 2025 WL 1668064 (Ky. App. June 13, 2025). Opinion Reversing, Vacating, and Remanding by Cetrulo, J.; Karem, J. (concurs) and McNeill, J. (concurs).

This appeal arose from an administrative agency ruling in a CAPTA (Child Abuse Prevention and Treatment Act) proceeding. The Cabinet for Health and Family Services made a determination of neglect upon a mother after one of her children accidentally ingested another child's medication while the children were being watched by a family member/caregiver. Mother appealed this determination, which resulted in her being added to a registry of persons who have abused or neglected a child. The circuit court affirmed the administrative agency ruling, but the Court of Appeals held the court had improperly shifted the burden to the mother to disprove the agency's findings. The Court further held in its *de novo* review of KRS 600.020 that there was no substantial evidence the child was harmed by "other than accidental means." Deference to an agency's fact finding is generally given on judicial review, but matters of law and interpretation of statutes are within the judiciary's province.

XI. FUNERAL PLANNING

A. *McCoy v. McCoy*, 2023-CA-1089-MR, 2025 WL 807445 (Ky. App. Mar. 14, 2025). Opinion Affirming by Acree, J.; Thompson, C.J. (concurs) and L. Jones, J. (concurs).

Donald McCoy died intestate and without written expression of his preferred place of burial. His surviving spouse, Emma McCoy – Donald's fifth wife – consented to his burial in the McCoy family cemetery in Pike County alongside a previous wife. Emma subsequently had a change of heart and sought to disinter Donald's remains and reinter them in a Floyd County cemetery. Seth McCoy, Donald's son, petitioned for a permanent injunction to prevent the move. Every witness at the bench trial, including Emma, testified to Donald's verbally expressed desire to be buried in the McCoy Family Cemetery. The circuit court granted the permanent injunction. At issue in this appeal was whether Emma possessed a paramount right, as Donald's surviving spouse, to determine where he was buried. The Court of Appeals explained that while interment is now governed by Kentucky statutory law, that law does not apply to disinterment-reinterment. Rather, disinterment-reinterment remains governed by Kentucky common law, which recognizes a surviving spouse's wishes "are not supreme," and that the wishes of the decedent, and the "rights and feelings of those entitled to be heard by reason of relationship or association" are also factors. The Court concluded the circuit court properly considered those factors and affirmed the circuit court's decision to permanently enjoin the disinterment-reinterment of Donald's body.

B. *Daniels v. Daniels*, 2023-CA-1027-MR, 2025 WL 1141918 (Ky. App. Apr. 18, 2025). Opinion Affirming by A. Jones, J.; Combs, J. (concurs) and Karem, J. (concurs).

In an appeal from the trial court's order dismissing Appellant's claims against the Appellees, the Court of Appeals affirmed. Appellant's deceased son was buried in one of three cemetery plots owned by Appellant. The son's mother, who predeceased him, was buried in one of the three plots as well. The first-named Appellee, Melissa Daniels, was married to the son at the time of his death and initially accepted this plan. However, six months after interment, at Melissa's direction, the cemetery disinterred the son and relocated his remains to a mausoleum in a different location. Appellant was not notified of his son's relocation. Appellant sued the Appellees, seeking an injunction for reinterment of the son's remains to their original place of burial, costs of performing the reinterment, costs of the suit, and emotional distress damages. The trial court granted Melissa's motion to dismiss pursuant to CR 12.02(f), concluding that Melissa was next-of-kin for purposes of deciding the disposition of the son's remains. The Court of Appeals affirmed, holding the trial court correctly applied KRS 367.93117 and 901 KAR 5:090 to ascertain who had the proper authority over the son's disinterment and reinterment. KRS 367.93117 contains a priority list ranking those with authority regarding interments, and the surviving spouse is ranked higher than the decedent's parents. Section 2(g) of 901 KAR 5:090 provides that an application for disinterment must include "a statement by the applicant that [s]he has obtained written permission from all members of the same class of the next-of-kin or an order from a court of competent jurisdiction for the removal of the remains." Because Melissa, as surviving spouse, was in a class by

herself which was higher than that of the Appellant, she was not required to obtain Appellant's permission for the disinterment and reinterment.

XII. IMMUNITY

A. *Wilson v. England*, 2023-CA-0223-MR, 705 S.W.3d 35 (Ky. App. 2024). Opinion Reversing and Remanding by Caldwell, J.; Acree, J. (concurs) and Lambert, J. (concurs).

Wilson, a firefighter, was driving an ambulance when he ran a stop sign, causing injuries to the passengers, who were EMTs, and a baby they were trying to save. England, one of the injured EMTs, brought suit against Wilson. The trial court determined that a firefighter's duty to drive an ambulance is a ministerial duty; therefore, Wilson could not enjoy qualified official immunity. However, there is no precedent of a firefighter having a specific duty to drive an ambulance a certain way, as they are not trained to specifically drive ambulances. Therefore, Wilson's actions were discretionary, and he was entitled to qualified official immunity.

B. *Baptist Health Medical Group, Inc. v. Farmer*, 2023-CA-0809-MR, 2024 WL 4795915 (Ky. App. Nov. 15, 2024). Opinion Reversing and Remanding by Eckerle, J.; Taylor, J. (concurs) and A. Jones, J. (concurs). Discretionary review granted 6/11/2025.

Appellants (collectively, "Baptist Health") sought review of a judgment entered on a jury verdict and award of damages to Appellee, Dr. Farmer, for breach of contract and tortious interference with a business relationship. Although procedural issues were raised in two prior appellate proceedings, the issue in this appeal squarely concerned the merits of Baptist Health's claims of immunity or exemption from liability under KRS 311.6191. In conclusion, the Court found Baptist Health was entitled to a qualified privilege from liability because Dr. Farmer did not show that Baptist Health acted without "good faith" or with "actual malice" per KRS 311.6191, and reversed the circuit court's judgment and remanded the matter for entry of a directed verdict dismissing Dr. Farmer's claims. The Court explained the trial court's definition of the aforementioned terms unreasonably constrained the scope of the statutory exemption and resulted in an undue restriction upon Baptist Health's undertaking discovery and presentation to the jury, allowing Dr. Farmer to discover and present the evidence favorable to his side while shielding evidence unfavorable to him.

The initial underlying action was brought against Baptist Health by Dr. Farmer after completing his residency in the Baptist Health medical program in October 2020. Dr. Farmer began his one-year medical residency program with Baptist Health in June 2019. In November 2019, concerns about Dr. Farmer's behavior and whether he was working while under the influence of intoxicants were brought to the attention of the Baptist Health's facility manager and the director of Baptist Health's residency program. While Dr. Farmer would not be subject to discipline as a physician resident, Baptist Health decided it would counsel Dr. Farmer in an attempt toward recovery and wellness. Because no proof existed as to whether Dr. Farmer was impaired at the relevant time and because disciplinary measures could have serious consequences

for Dr. Farmer, Baptist Health ultimately decided to refer Dr. Farmer to the Kentucky Physician's Health Foundation ("the Foundation"), which identifies and evaluates impaired individuals for diagnosis, treatment, and advocacy, but does not punish or sanction doctors. The Foundation conducted comprehensive testing and evaluations and made recommendations for Dr. Farmer's care. However, the trial court only allowed Baptist Health to inform the jury generally and in a conclusory fashion that Dr. Farmer's test results and information caused the Foundation to report Dr. Farmer to the Kentucky Board of Medical Licensure ("the Board"). Thus, the jury only knew that Baptist Health made a disciplinary referral of Dr. Farmer to the Board but did not know that it did so after a finding of significant impairment of Dr. Farmer that could cause injury to himself, patients, and the public. Additionally, the trial court did not allow Baptist Health to present to the jury steps taken by the Board after conducting its own investigation, which included Dr. Farmer's consent to regular, long-term monitoring, allowing Dr. Farmer to substitute research electives for patient care to help him complete his residency on time, continue to receive compensation, and be free of suspension or discipline. Ultimately, Dr. Farmer returned to patient care in February 2020 and completed his residency in September 2020. Dr. Farmer did not appeal or directly challenge any of the testing, diagnosis, or actions of the treatment providers, the Foundation, or the Board.

The trial court did not allow the jury to learn about these undisputed facts, all of which were important to Baptist Health's ability to show its good faith and lack of actual malice. The Court explained the trial court prevented the jury from seeing the full picture of Baptist Health's attempts to help Dr. Farmer and instead gave the jury some of the actions taken without any context or explanation. Thus, the trial court's rulings to exclude vast swaths of evidence crippled Baptist Health's case and deprived it of presenting any meaningful defense. Furthermore, the Court concluded the language of KRS 311.6191 broadly precludes parties who furnish information to the Foundation from liability for all claims arising from the referral to the Foundation, including breach of contract. However, liability can be found where there is both actual malice and lack of good faith. The Court clarified KRS 311.6191 indicates the General Assembly intended to provide qualified protection from liability to parties who furnish information to the Foundation unless a plaintiff affirmatively shows bad faith and actual malice. Likewise, KRS 311.6191 clearly requires a showing that a party did not act in good faith and with actual malice.

C. *Everman v. Robinson*, 2023-CA-1018-MR, 2024 WL 4996419 (Ky. App. Dec. 6, 2024). Opinion Affirming in Part, Reversing in Part, and Remanding by Taylor, J.; Combs, J. (concurs) and L. Jones, J. (concurs).

Robinson (Appellee) filed a complaint against Deputy Everman and Sheriff Stewart (Appellants) after she lost control of her motor vehicle and struck Deputy Everman's vehicle, resulting in her suffering significant injuries. Robinson alleged Deputy Everman negligently parked his car when responding to an accident scene, and Sheriff Stewart may be held vicariously liable for the tortious conduct of his agent, Deputy Everman. This appeal followed the circuit court's denying Appellants' motion for summary judgment to dismiss the negligence action based upon qualified official immunity and sovereign immunity. To be entitled to qualified official immunity, a

public official must have performed a discretionary act, in good faith, and within the official's authority. *Yanero v. Davis*, 65 S.W.3d 510, 522 (Ky. 2001). Additionally, the Court previously held in *Sholar v. Turner*, 664 S.W.3d 719 (Ky. App. 2023), that a police officer's decision concerning where to park their police vehicle at an accident scene constituted a discretionary act. Therefore, the Court concluded the circuit court erred by denying summary judgment as Deputy Everman, in his individual capacity, is entitled to qualified official immunity. In applying the Supreme Court's interpretation of KRS 70.040 in *Jones v. Cross*, 260 S.W.3d 343 (Ky. 2008), the Court concluded Sheriff Stewart, in his official capacity, is shielded from liability by the doctrine of sovereign immunity for his own acts but the office of the sheriff is not shielded from liability for the acts of its deputies. The Court explained that KRS 70.040 constitutes a legislative waiver of the sovereign immunity traditionally enjoyed by a sheriff at common law; as a result, the office of the sheriff is liable for the acts and omissions of its deputies, but not the sheriff individually. *Jones*, 260 S.W.3d at 346. Likewise, Deputy Everman is not entitled to the protection of sovereign immunity in his official capacity as a deputy sheriff. The Court concluded any liability in Deputy Everman's official capacity is moot, given the conclusion that he is entitled to qualified official immunity in his personal capacity. On remand, the Court concluded Deputy Everman shall be dismissed as a party, and the case may proceed against the office of the sheriff only as provided for in KRS 70.040. Sheriff Stewart has sovereign immunity against any claims in his personal capacity and shall not be held personally liable for any claims asserted in this case.

D. *Dickerson v. Bower*, 2024-CA-0132-MR, 2025 WL 568557 (Ky. App. Feb. 21, 2025). Opinion Affirming by Acree, J.; L. Jones, J. (concurs) and McNeill, J. (concurs).

Cortezz Dickerson and Mackenzie Kraps asserted physical tort and malicious prosecution claims against various Louisville Metro Police Department officers in their individual capacities. Their claims stemmed from their actions during a "caravan protest" in downtown Louisville, which led to their arrests. The trial court concluded the officers were entitled to qualified official immunity on the physical tort claims and granted summary judgment to the officers on the malicious prosecution claims. The Court affirmed. Citing prior decisions of the Kentucky Supreme Court, the Court emphasized that trial courts must engage in fact-finding in resolving an immunity claim, even if presented in a motion for summary judgment. The Court went on to conclude the trial court's findings with respect to the officers' immunity claims were supported by substantial evidence, and the officers were entitled to qualified official immunity on the physical tort claims as Dickerson and Kraps failed to make a showing the officers' discretionary acts were conducted in bad faith. The Court concluded the trial court properly granted summary judgment on the malicious prosecution claims, as neither Dickerson nor Kraps could make a showing the officers lacked probable cause in arresting them.

XIII. INSURANCE

A. *Erie Insurance Exchange v. Shri Bramani, LLC*, 2023-CA-0169-MR, 2024 WL 3463666 (Ky. App. July 19, 2024). Opinion Reversing and Remanding by Jones, J.; Caldwell, J. (concurs) and Cetrulo, J. (concurs). Discretionary review granted 2/13/2025.

In a direct appeal from the trial court's summary judgment against it in a declaratory judgment action, Erie Insurance Exchange ("Erie") contended the trial court erroneously interpreted an exclusionary clause in its insurance coverage with a gas station for injuries or damages caused by "pollution." The trial court ruled that an incident involving a leak from an underground petroleum tank, causing alleged environmental damage to a neighboring property, was not excluded based on the policy. The Court of Appeals disagreed and reversed the trial court. The Court held that gasoline is clearly a pollutant when it leaks from an underground storage tank and enters a neighbor's land and contaminates the water and soil thereon. In so doing, the Court disagreed with Appellees' argument that the exclusion was ambiguous because the policy's definition of "pollutant" did not specifically name "gasoline" or "petroleum." Applying reasoning from its earlier precedents, the Court held the list of potential pollutants is virtually boundless. It would be both impractical and inefficient for the insurer to attempt to include a laundry list of every potential pollutant in its policies. Furthermore, in considering the ordinary meaning of the term, the Court cited the United States Supreme Court for the principle that even a valuable and useful product such as gasoline can become a pollutant when it contaminates a natural resource. *U.S. v. Standard Oil Co.*, 384 U.S. 224, 226 (1966). Finally, the Court ruled this type of exclusion is enforceable when the nature of the damage is one in which the purported pollution is alleged to cause contamination, negative health, or environmental effects, as was the case here. The Court of Appeals concluded by reversing the trial court's summary judgment order and remanding with instructions to enter a judgment in favor of Erie.

B. *Deadwyler v. Grange Property and Casualty Insurance Company*, 2023-CA-1011-MR, 697 S.W.3d 539 (Ky. App. Aug. 30, 2024). Opinion Affirming by Acree, J.; Thompson, C.J. (concurs) and Goodwine, J. (concurs).

Appellants, Kesha Deadwyler and Ashley Anderson, received treatment from Total Health Chiropractic and Rehab (Total Health) following an auto accident and sought basic reparation benefits from Appellee, the Grange Property and Casualty Insurance Company (Grange) under a policy held by Deadwyler. Appellants sought treatment from Total Health 46 days after the accident and sought reimbursement from Grange thereafter. Deadwyler's policy with Grange obligated persons seeking coverage to undergo examinations under oath (EUOs) as frequently as Grange reasonably required. Grange petitioned the circuit court to conduct an EUO of both Appellants pursuant to KRS 304.39-280(3), seeking to question them about the facts and circumstances surrounding the auto accident. Grange suspected Total Health engages in insurance fraud, including billing for services not rendered. Grange also suspected Total Health solicited Appellants within 30 days despite being prohibited by KRS 367.4082 from doing so. Grange listed seven topics of inquiry for its proposed EUO, including questions regarding solicitation and the circumstances of the

accident. The circuit court granted Grange's petition but limited the scope of Grange's inquiry to exclude discussion of Appellants' medical treatment. Regarding Grange's proposed questioning about solicitation, the circuit court limited Grange's inquiry to whether Appellants were referred to Total Health within 30 days of the auto accident and, if so, the name of the person who referred them. Appellants appealed, arguing (1) Grange did not demonstrate good cause for its EUO as KRS 304.39-280(3) requires; and (2) the information Grange sought is beyond the scope of acceptable EUO topics that *State Farm Mutual Auto Insurance Company v. Adams*, 526 S.W.3d 63 (Ky. 2017) established. The Court of Appeals determined good cause existed for the proposed EUO because it could not be said that no relevant information could be gleaned from the proposed EUO; the proposed EUO would allow Grange to obtain information regarding suspected insurance fraud and solicitation. As for Appellants' second argument, the Court of Appeals determined the circuit court had properly restricted the scope of inquiry in compliance with *Adams*. Under *Adams*, only certain topics may be inquired into during EUOs. Accident-related questions are permissible, while medical-related questions are not. Adams noted that accident-related and medical-related questions may sometimes be inter-related and placed faith in trial courts to make such distinctions absent statutory guidance. Applying these principles to the appeal before it, the Court of Appeals determined the circuit court's tailoring of EUO questioning complied with *Adams* by excluding medical-related inquiries and restricting the scope of the solicitation inquiry, which the circuit court had deemed both accident-related and medical-related.

C. *Jarnigan v. Allstate Property and Casualty Insurance Company*, 2023-CA-0333-MR, 2024 WL 3836618 (Ky. App. Aug. 16, 2024). Opinion Reversing and Remanding by Taylor, J.; Combs, J. (concurs) and L. Jones, J. (concurs). Discretionary review granted 3/12/2025.

This appeal arose from a motor vehicle accident between Jarnigan and Middleton. Jarnigan was insured by Allstate and Middleton was insured by State Farm. Because Jarnigan suffered injuries, Allstate paid basic reparation benefits of $10,000 for Jarnigan's medical expenses. Jarnigan filed suit against Middleton in Ohio Circuit Court, but eventually offered to settle for $50,000, which was the policy limit for bodily injury coverage. Jarnigan was informed Allstate asserted its right to be subrogated for its reparation payment to him. State Farm reimbursed Allstate $9,000 from Middleton's bodily injury coverage in the amount of $50,000, but both companies failed to inform Jarnigan's counsel of the payment. Only $41,000 of the bodily injury benefits under Middleton's policy remained, and the parties reached a settlement where Jarnigan would receive the remaining $41,000 of benefits available under the State Farm policy. Jarnigan released Middleton and State Farm from additional liability but filed a motion to amend his complaint to add Allstate as a defendant. He asserted that Allstate could only seek to recoup paid basic reparation benefits through subrogation if its insured, Jarnigan, was fully compensated for his injuries. Jarnigan also alleged that Allstate violated the Motor Vehicle Reparations Act (MVRA) by wrongfully obtaining the $9,000 payment and had acted in bad faith and in violation of the Unfair Claims Settlement Practices Act (UCSPA) by obtaining the payment. The motion to amend the complaint was granted by the trial court, and Allstate filed a motion to dismiss. The motion to dismiss was granted by the trial

court, because Jarnigan's claims based upon bad faith and violation of the UCSPA could not succeed and Jarnigan failed to state a claim upon which relief could be granted. However, Jarnigan filed a motion to vacate the trial court's order, arguing the trial court failed to address all the claims raised in his amended complaint against Allstate. The motion was granted, and the trial court acknowledged that Allstate improperly obtained reimbursement of $9,000 for basic reparation benefits paid to Jarnigan. Nonetheless, the trial court determined Jarnigan's only remedy was to seek recoupment of the $9,000 from State Farm since it wrongfully reimbursed Allstate. Jarnigan's amended complaint was dismissed pursuant to CR 12.02. This case hinged on whether Allstate improperly obtained reimbursement of $9,000 from State Farm by allegedly misusing its statutory subrogation right found in the MVRA and the proper remedy, if any, for such misuse. Under KRS 304.039-070, a reparation obligor (such as Allstate) does not have an all-encompassing right to subrogation for paid basic reparation benefits. Those subrogation rights are limited by KRS 304.39-140(3); the reparation obligor may only obtain reimbursement for paid basic reparation benefits from the tortfeasor's liability insurance if its insured is fully compensated for his damages. Thus, there exists a legal remedy against Allstate for its misconduct. The insured party, Jarnigan, may recover directly from its insurer, Allstate, such amount of the improperly received basic reparation benefits reimbursement that would have been available from a tortfeasor's liability carrier to compensate the insured for his damages. The trial court thus erred by rendering summary judgment dismissing Jarnigan's amended complaint. The Court reversed and remanded.

D. *Caudill v. Daily Underwriters of America, Inc.*, 2023-CA-1168-MR, 700 S.W.3d 526 (Ky. App. 2024). Opinion Affirming by Taylor, J.; Acree, J. (concurs) and Karem, J. (concurs).

This appeal centered upon whether Plaintiff is entitled to stack underinsured motorist coverage (UIM) under a commercial motor vehicle insurance policy issued by Daily Underwriters of America Inc. (Daily Underwriters) to the Plaintiff's employer, L.M. Trucking Company, Inc. (L.M. Trucking). This matter arose when Plaintiff suffered severe injuries after being involved in an accident while driving a tractor trailer for L.M. Trucking. The circuit court rendered summary judgment in favor of Daily Underwriters after concluding the UIM provisions and policy to be clear and unambiguous, and Plaintiff is not entitled to stack the UIM coverage because he did not qualify as an individual named insured or family member. The issues on appeal included whether the UIM coverage under the policy could be stacked and, if so, whether Plaintiff qualified as an individual named insured or family member under the UIM provision. Looking at the plain and unambiguous language of the policy provisions, the Court concluded the policy allows for an individual named insured or family member to stack UIM coverage upon other insured vehicles; however, L.M. Trucking is the named insured, not Plaintiff. Thus, concluding Plaintiff is precluded from stacking UIM coverage as he does not qualify as an individual named insured or family member within the plain meanings of the terms as the policy is clear and unambiguous. The Court affirmed the circuit court's order for summary judgment.

E. *Hutchens v. John Hancock Life Insurance Company*, 2024-CA-0116-MR, 2025 WL 1478230 (Ky. App. May 23, 2025). Opinion Affirming by Cetrulo, J.; Acree, J. (concurs) and Taylor, J. (concurs).

This appeal followed summary judgment rulings in favor of a life insurance company and a financial consultant. The Court affirmed. The "insured" died unexpectedly within weeks of applying for a $2 million life insurance policy, but before the policy was actually delivered. While he had been approved for the coverage, the delivery of the policy before death was a condition precedent to the enforceability of the contract. There was insufficient evidence of any fraud, misrepresentation, or bad faith to warrant the matter proceeding to a jury, and no duty was imposed to process this application within a reasonable time.

F. *Preston v. Nationwide General Insurance Company*, 2024-CA-0152-MR, 2025 WL 1478614 (Ky. App. May 23, 2025). Opinion Affirming in Part, Vacating in Part, and Remanding by McNeill, J.; Combs, J. (concurs) and Lambert, J. (concurs).

Preston was injured in a motor vehicle accident while working as a paramedic. He filed a workers' compensation claim and was awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical expenses. Preston filed a claim against the other driver and later amended his complaint to include Kentucky Association of Counties and All Lines Fund ("KALF"), Carter County EMS's insurer, and Nationwide, his insurer, for underinsured motorist ("UIM") benefits. KALF and Nationwide both filed motions for summary judgment. Nationwide contended two policy provisions precluded coverage: an exclusion when using a motor vehicle to carry persons for a fee and its "other insurance" clause. KALF argued Preston's claims were time-barred under the policy and that its policy specifically excluded payment for loss already compensated by workers' compensation awards. The circuit court granted both motions for summary judgment. The Court affirmed summary judgment as to Nationwide, finding its policy was not against public policy and its provisions included plain and unambiguous language that its insurance only applied if the total amount of UIM insurance available from other sources was less than its UIM policy limits. Because KALF's policy limit exceeded Nationwide's policy limit, UIM coverage was unavailable to Preston under the Nationwide policy. The Court vacated the summary judgment as to KALF and remanded the matter for further proceedings. The KALF policy did not preclude the type of damages Preston sought to recover and the claims were not time-barred.

XIV. JURISDICTION

SuperAsh Remainderman, LP v. Ashland, LLC, 2023-CA-0427-DG, 2023-CA-0566-DG, 2023-CA-0578-DG, 2024 WL 4521291 (Ky. App. Oct. 18, 2024). Opinion Reversing and Remanding by Eckerle, J.; Easton, J. (concurs) and Lambert, J. (concurs).

The Court granted discretionary review to Appellant, SuperAsh Remainderman, LP ("SuperAsh") from orders of the Fayette, Jefferson, and Harrison Circuit Courts. Those orders affirmed the orders of the Fayette, Jefferson, and Harrison District Courts (the "district

courts"), dismissing SuperAsh's forcible detainer complaints against Appellees, Ashland, LLC ("Ashland"), and its sub-lessee, Speedway, LLC ("Speedway"). This appeal involved litigation commenced first in Ohio. The Ohio Court made factual and legal findings that the lower courts interpreted as binding upon them. The Court of Appeals reversed the circuit courts' summary orders affirming because the district courts did not make their own findings as to jurisdiction, did not adequately analyze crucial issues, and applied incorrect factual and legal standards even where they did have jurisdiction over the dispute. The Court remanded back to the district courts for further adjudication as the district courts may conduct forcible detainer proceedings, but they must confine themselves jurisdictionally to addressing matters of law and not equity, except where authorized to do so.

XV. JURY STRIKES

Collins v. Commonwealth, 2023-CA-1291-MR, 2025 WL 1415555 (Ky. App. May 16, 2025). Opinion Affirming by Acree, J.; L. Jones, J. (concurs) and McNeill, J. (concurs).

After a jury convicted Collins of first-degree promoting contraband and possession of drug paraphernalia, Collins sought reversal, arguing the circuit court committed reversible error by failing to strike two jurors for cause. Collins had to use two peremptory strikes to remove them from the venire. He also indicated on his juror strike sheet two others he would have stricken had he not been forced to use peremptory strikes. However, Collins failed to satisfy the strictly applied rules for preserving this claim of error for appeal. The rules for preserving error based on the trial court's refusal to strike a juror or jurors for cause require strict compliance. There are six "box[es] a litigant must check in order to preserve a for[-]cause strike error[.]" *Floyd v. Neal*, 590 S.W.3d 245, 252 (Ky. 2019). Additionally, Collins did not request the Court to review under palpable error. Given Collins' failure to demonstrate the error he alleged was properly preserved in compliance with *Floyd*, the circuit court was affirmed.

XVI. LEGISLATIVE/OFFICE OF ATTORNEY GENERAL AUTHORITY

Commonwealth ex rel. Coleman v. Doe 1, 2023-CA-1103-MR, 2023-CA-1140-MR, 696 S.W.3d 840 (Ky. App. 2024). Opinion Affirming 2023-CA-1103-MR and Vacating and Remanding 2023-CA- 1140-MR by Easton, J.; Acree, J. (concurs) and Goodwine, J. (concurs).

The Office of the Attorney General (OAG) issued a grand jury subpoena with the support of the Franklin County grand jury. OAG was investigating the employment of Jane Doe 1 and Jane Doe 2 ("the Does"), both employed by Roe LLC. The Does had a second employer in the same county who received some of its general funding from the Commonwealth. The focus of the investigation was potential violations of criminal laws involving state funds. The June 2023 subpoena issued by OAG was directed to Roe, a member of Roe LLC, and sought essentially all employment records regarding the Does. OAG wanted to compare the records for evidence that certain state funds were related to some kind of deceit connected with their work. Roe and the Does moved to quash the subpoena and seal the record. OAG agreed the record should be sealed. The trial court granted the motion to quash the subpoena. After the first notice of appeal was filed, the trial court entered an order which unsealed a portion of the record. OAG filed an emergency motion to the Court of Appeals, asking for an order that the case remain sealed pending an opinion on the merits of the appeals, which was granted.

As to the sealing of the record, the Court concluded that its keeping the identities of the participants anonymous and the trial court's reassessing whether any or all parts of the record should be sealed will balance the necessary secrecy surrounding grand jury proceedings and the public's right to know what its government does. As to the merits of the appeal, the OAG asked the Court to reverse the trial court's determination the Does have standing to challenge the subpoena. The Court held the Does, along with Roe, did have standing to bring the action because OAG sought personal and financial information not generally available to the public. The action was the only way for the Does to address the potential invasion of privacy. OAG argued it had the authority under KRS 15.715(6) in Franklin County to investigate the potential crimes at issue here (unauthorized payments being made from the state treasury to the Does). However, the alleged payments were being paid indirectly to the Does and occurred outside of Franklin County. Kentucky has adopted a cooperative prosecutorial system, and no one in the county where the Does work asked the OAG to assist in investigating crimes in that particular county. KRS 15.715(6) cannot apply just because there is possibly an indirect connection to state funds. Further, the trial court found the subpoena issued to be unreasonable because there was no allegation that state funds were being used directly to violate the law, and there was no precedent provided to support the theory that any crime was committed relating to the personal and tax information sought. Thus, the trial court's order quashing the subpoena in question was affirmed.

XVII. LIABILITY

A. *Poynter v. Johnson*, 2024-CA-0004-MR, 2025 WL 569112 (Ky. App. Feb. 21, 2025). Opinion Vacating and Remanding by Caldwell, J.; A. Jones, J. (concurs) and Taylor, J. (concurs).

The trial court granted partial summary judgment in favor of an automobile dealer based on its determination the dealer was not the statutory owner of a car involved in a fatal one-vehicle accident. The trial court based its grant of summary judgment on its application of the Transportation Cabinet Secretary's early-COVID-era official order extending by 90 days expiration dates and/or deadlines relating to vehicle registration and drivers' licenses and permits. The Court of Appeals vacated the grant of summary judgment and remanded for further proceedings. After the Governor declared a state of emergency due to COVID on March 18, 2020, the Secretary of the Kentucky Transportation Cabinet issued Official Order No. 112155 ("the official order") which called for extending by 90 days expiration dates and deadlines relating to drivers' licenses, permits, and vehicle registrations. That same day, Appellee Greg Coats Cars, Inc. ("GCC") acquired a Dodge Charger ('the car") from a dealership in West Virginia, and admittedly, did not notify the county clerk's office of the assignment of the car to its dealership within 15 days. On April 7, 2020, Julius L. Johnson ("Johnson") purchased and took possession of the car from GCC. Johnson executed a limited power of attorney, designating GCC as his attorney-in-fact so it could deliver the certificate of title assignment and the application for certificate of title and registration (collectively, "title/registration documents") on his behalf to the county clerk's office. On May 1, 2020, Johnson was driving the car with two additional passengers when it was involved in a single-vehicle accident. One passenger, Malik Stafford ("Stafford"), was injured, and the other, Isaiah Woodson ("Woodson") was killed. On May 27, 2020, a GCC runner delivered the title/registration documents to

the Jefferson County Clerk's office for processing. Title was ultimately transferred to Johnson on June 1, 2020.

In the fall of 2020, Stafford and the administrator of Wood's estate (collectively, "Appellants") filed suit against Johnson and GCC. Relevant to this appeal, they alleged that GCC failed to properly transfer title to Johnson pursuant to KRS 186A.220(5), pointing out GCC was the title holder to the car at the time of the accident on May 1, 2020, and argued GCC should be required to extend insurance coverage to the car. Both Appellants and GCC filed motions for partial summary judgment about whether GCC was the statutory owner of the car for insurance purposes at the time of the fatal accident. Ultimately, the trial court granted summary judgment in GCC's favor on the statutory owner issue, concluding the official order applied so the dealership had at least 90 days in which to deliver the title/registration documents to the county clerk. Additionally, the trial court concluded GCC's delivery of the document was within the 90-day extension, and the delay in such delivery was justified.

The Court found the trial court erred in reaching its conclusion that the official order applied to the dealership in this regard. First, the Court examined the basic principles for determining the statutory owner of a car under KRS 186A.220. In reviewing the Supreme Court's analysis in *Zepeda v. Central Motors, Inc.*, 653 S.W.3d 59 (Ky. 2022), the Court discussed the process of determining the owner of a car for insurance purposes by and through dealership compliance with KRS 186A.220 requirements. Without taking a position regarding whether GCC could be held the statutory owner, the Court remanded for the trial court to determine whether GCC acted promptly under the circumstances in delivering the title/registration documents to the county clerk or whether delay was justified as a matter of law based on the evidence before it. Nevertheless, the Court concluded the 90-day extension in the official order does not apply to the dealer's delivery of the title/registration documents to the county clerk's office. Second, the Court concluded the official order does not apply to afford a 90-day extension to the KRS 186A.220(5) requirement that a dealer act promptly in delivering the title/ registration application and supporting documents to the county clerk's office on a buyer's behalf. The Court noted the primary focus of the official order was to provide a 90-day extension on looming expiration dates for drivers' licenses, permits, and vehicle registrations, all of which were fixed with current expiration dates. In contrast, there was no fixed deadline or current expiration date to extend regarding the promptness requirement under KRS 186A.220(5) and such a flexible requirement cannot reasonably have been extended by a fixed period of 90 days. Additionally, the official order contains numerous references to renewing expiring "registrations," but does not explicitly refer to "title" or "ownership" or procedures for transferring title or ownership of vehicles. Lastly, the Court remanded with directions for the trial court to resolve whether, based on the evidence before it, GCC acted promptly under the circumstances or the delay in delivering the title/registration application to the county clerk's office was justified as a matter of law.

B. *Eagle Furniture Manufacturers, LLC v. Nautilus Insurance Company*, 2023-CA-0501-MR, 706 S.W.3d 780 (Ky. App. 2025). Opinion Affirming by A. Jones, J.; Caldwell, J. (concurs) and Cetrulo, J. (concurs).

In a direct appeal from the trial court's grant of summary judgment to Nautilus and IPFS, the Court of Appeals affirmed. At issue in this case was whether the general commercial liability policy Appellant purchased from Nautilus and financed through premium finance company IPFS was in effect at the time of Appellant's loss. An agreement between Appellant and IPFS granted IPFS power-of-attorney to cancel the insurance policy if Appellant defaulted. However, KRS 304.30-110 incorporates certain notice-before-cancellation requirements into premium finance agreements. One such requirement is that the premium finance company must mail to the defaulting insured a notice of intent to cancel that states a time by which default must be cured, and the stated time may not be earlier than the 10th day after the date the notice is mailed. KRS 304.30-110(2). Appellant failed to make its payment on December 11, 2020, IPFS mailed its notification on December 14, and Appellant failed to make its past-due payment on December 29. IPFS responded by mailing notices of cancellation to both Nautilus and Appellant on December 31, indicating the policy would be cancelled on January 2, 2021. Two days later, Appellant suffered a loss which would be covered by the policy, and it attempted to make the past-due payment on the policy to IPFS. IPFS rejected the tender, and Nautilus, citing cancellation of the policy, refused coverage. Appellant sued both IPFS and Nautilus on grounds related to breach of the insurance contract, and the circuit court granted summary judgment to Nautilus and IPFS.

Appellant presented three overarching arguments on appeal, contending the circuit court: (1) erroneously granted summary judgment to IPFS; (2) erroneously granted summary judgment to Nautilus; and (3) granted summary judgment prematurely. The Court of Appeals rejected Appellant's arguments. First, it held the circuit court correctly viewed the law surrounding KRS 304.30-110 when IPFS cancelled the insurance policy with Nautilus. Despite Appellant's argument that IPFS failed to show actual notice, *i.e.,* that Appellant had received the notices, the statute only requires the premium finance company to mail the notices. The stricter requirement of actual notice may not be read into the statute. Furthermore, the evidence of record showed IPFS had mailed those notices. Second, it held the record supported summary judgment against Nautilus. Appellant argued Nautilus acted contrary to KRS 304.20-320(2) and/or KRS 304.30-110. However, KRS 304.30-110 applies only to premium finance companies, and Nautilus was merely the insurer. In addition, KRS 304.20-320(2) was inapplicable as well. That statute concerns cancellations by insurers, but it was not Nautilus that cancelled – it was IPFS acting as Appellant's attorney-in-fact. Moreover, Appellant failed to adduce any evidence that Nautilus breached any contractual obligations it owed to Appellant. Third, and finally, Appellant failed to show summary judgment was premature. Appellant, arguing for more discovery, offered nothing more than a hope or belief that "something will 'turn up'" – which is wholly inadequate for summary judgment purposes. *See Benningfield v. Pettit Environmental, Inc.*, 183 S.W.3d 567, 573 (Ky. App. 2005) (*quoting Neal v. Welker*, 426 S.W.2d 476, 479-80 (Ky. 1968)).

XVIII. MALPRACTICE

Carpenter v. Saunders, 2023-CA-0923-MR, 705 S.W.3d 48 (Ky. App. 2024). Opinion Affirming by Karem, J.; Acree, J. (concurs) and Eckerle, J. (concurs).

Patient filed a complaint against her treating surgeon alleging malpractice for failing to obtain informed consent. The trial court granted summary judgment finding there was no proof that the patient's alleged lack of informed consent caused her injuries. The patient, although acknowledging she was fully aware of the risks and hazards of surgery, alleged the doctor violated the standard of care for obtaining informed consent by not fully answering her questions regarding his experience. In addition, she alleged the doctor misled her as to the number of prosthetics that would be available for implantation during surgery. She ultimately claimed, had she been provided the complete and correct answers to her questions, she would not have consented to this particular doctor performing the surgery. The Court affirmed the trial court's finding the patient failed to provide proof the alleged negligence was the cause of her injuries. The Court went on to explain that any claim she may have falls more appropriately in the realm of battery.

XIX. NEGLIGENCE

A. *Mullins v. Appalachian Regional Healthcare, Inc.*, 2023-CA-1490-MR, 707 S.W.3d 1 (Ky. App. 2025). Opinion Affirming in Part, Reversing in Part, and Remanding by Easton, J.; Combs, J. (concurs) and Cetrulo, J. (concurs).

Appellant brought suit individually and in capacity as administrator of the decedent's estate, alleging medical negligence resulting in death. The circuit court granted summary judgment to the Appellee medical providers after concluding the Appellant failed to produce adequate expert testimony demonstrating evidence of medical negligence. At the time of summary judgment, nine individual medical practitioners and one hospital were named as defendants. The Court affirmed summary judgment as to seven of the Appellees but reversed and remanded for further proceedings as to three Appellees. At issue on appeal was the adequacy of the opinions produced by Appellant's experts. To prove liability, it must be shown that each defendant violated the standard of care, and such violation caused the injuries. However, general statements of a violation of standards of care without reference to any individual medical practitioner by name or by specialty are insufficient. Thus, to survive a summary judgment motion by each defendant, Appellant needed to disclose expert testimony specific to each defendant. The Court affirmed summary judgment as to seven of the Appellees, explaining that without more particularized statements having been made, the seven Appellees were entitled to summary judgment because Appellant was unable to raise a genuine issue of material fact against them. However, the Court reversed summary judgment and remanded for further proceedings as to the remaining three Appellees after concluding one of the expert reports did provide and note particular actions sufficient to create a genuine issue of material fact believed to be violations of the applicable standard of care.

B. *Rehkamp v. Drees Company*, 2024-CA-0665-MR, 2025 WL 1478273 (Ky. App. May 23, 2025). Opinion Affirming by Karem, J.; L. Jones, J. (concurs) and McNeill, J. (concurs).

Homeowners filed suit against the builder of their home, alleging negligence and negligence *per se*. The home was originally built in 2003, and the homeowners were the fifth owners, having purchased it approximately 20 years after it was built. Almost immediately, the homeowners began experiencing plumbing issues and, ultimately, experienced seven events within the first four months of owning the property. Homeowners engaged the services of a plumbing company to determine the cause of the issues they were experiencing. The plumbers scoped the pipes and determined that faulty construction by the original builder led to the presence of a "belly" in the pipes, causing sewage and water issues. Subsequently, homeowners filed suit against the builder, alleging negligence and negligence *per se*. Following a hearing, the trial court granted the builder's motion for summary judgment and dismissed the claims. The homeowners appealed. The Court affirmed the trial court. Specifically, it held the economic loss rule applies to consumer transactions, meaning there must be privity between the parties for the claimant to pursue damages. Here, the homeowners were not in privity with the builder and were thus precluded from recovering damages under contract theory. They also could not recover under the calamitous event exception to the economic loss rule because no such event existed. Thus, their claims were properly dismissed.

XX. OPEN RECORDS ACT

Crigler v. McLaughlin, 2024-CA-0399-MR, 2025 WL 1196304 (Ky. App. Apr. 25, 2025). Opinion Reversing and Remanding by Caldwell, J.; Acree, J. (concurs) and Lambert, J. (concurs).

This matter arose from Boone County Clerk Justin Crigler's appeal from the trial court's grant of a petition for open records inspection of cast ballots. The county clerk contended the trial court erred in determining that cast ballots are public records and are not excepted from inspection under the Open Records Act. The Court of Appeals reversed and remanded for entry of an order denying the petition for inspection of cast ballots. The matter primarily hinged on matters of statutory interpretation of Kentucky's election laws, Kentucky's Open Records Act, and the Kentucky Constitution. Despite concluding a cast ballot meets the broad definition of *public record* in KRS 61.870(2), the Court held that cast ballots are excepted from inspection under the Open Records Act. Kentucky law strongly recognizes an interest in keeping individuals' votes private. *See, e.g.,* KY. CONST. §147; KRS 118.025(1); *Banks v. Sergent*, 104 Ky. 843, 48 S.W. 149, 151 (1898). While recognizing that nothing in Kentucky's election statutes specifically prohibits the inspection sought under the present circumstances, disclosure of ballots and the information therein is clearly restricted by Kentucky legislative enactments, and thus ballots are excepted from application of the Open Records Act. KRS 61.878(1)(l). In sum, the constitutionally enshrined secrecy of the ballot outweighs any public interest in allowing inspection of cast ballots, especially since other election records are already available for public inspection. There remain other options for citizens to obtain important information and be involved in ensuring fair elections; however, the secrecy of the ballot remains paramount.

XXI. PAROLE

Hines v. Kentucky Parole Board, 2024-CA-0288-MR, 2025 WL 1599849 (Ky. App. June 6, 2025). Opinion Affirming by Lambert, J.; McNeill, J. (concurs) and Combs, J. (concurs and files separate opinion.)

The Court denied the petition for a writ of prohibition/mandamus, which was filed to prevent the Parole Board from holding a final revocation hearing without first conducting a competency hearing when the parolee's competency was in question. The Court noted the legislature has not included a method to address competency in any parole legislation and held the minimum due process requirements as set forth in *Jones v. Bailey*, 576 S.W.3d 128 (Ky. 2019), protect a parolee's due process rights by providing a right to counsel under certain circumstances. The Court rejected Hines's reliance upon *Smith v. Commonwealth*, 687 S.W.3d 914 (Ky. App. 2024), because that opinion addressed probation revocation, not parole revocation, and relied upon RCr 8.06 and KRS 504.100, which both reference the court rather than the Parole Board because they have to do with probation revocation. The Court stated it is up to the legislature to specifically include competency requirements as a requisite element of parole proceedings and create a process for the Parole Board to order and fund such evaluations.

XXII. PREEMPTION

Ledford v. UofL Health-Louisville, Inc., 2024-CA-0022-MR, 2025 WL 349539 (Ky. App. Jan. 31, 2025) (not reported in S.W. Rptr.). Opinion Reversing and Remanding by A. Jones, J.; Cetrulo, J. (concurs) and Combs, J. (concurs).

Ledford brought suit for common law invasion of privacy and negligence claims against UofL Health. The Jefferson Circuit Court determined the claims were preempted by the Health Insurance Portability and Accountability Act (HIPAA), and granted UofL's motion for judgment on the pleadings and dismissed Ledford's claims. While there is no private cause of action under HIPAA, that does not mean that HIPAA prohibits common-law tort claims based on the wrongful release of confidential medical information. HIPAA contains an express preemption clause, however where the state law is contrary to HIPAA. HIPAA will not supersede it so long as the state law is more stringent than HIPAA. State law and HIPAA can coexist. Kentucky's common law tort for invasion of privacy is consistent and in harmony with HIPAA insomuch as it would prevent disclosure of private medical information without cause. Additionally, assuming that Kentucky's common law recognizes a negligence cause of action arising from breach of patient privacy, such a cause of action is not contrary to HIPAA. In sum, to the extent such claims exist and are factually viable, they are not preempted by HIPAA. The order of the Jefferson Circuit Court was reversed and remanded.

XXIII. PROBATION

Commonwealth v. Branham, 2024-CA-0498-MR, 2025 WL 1478502 (Ky. App. May 23, 2025). Opinion and Order Dismissing by Taylor, J.; Easton, J. (concurs) and Eckerle, J. (concurs).

The only issue on appeal was whether the trial court erred by concluding that Branham was eligible for probation under KRS 533.060, had the court elected to enter an alternative

sentence upon Branham's plea. Because probation was not granted and Branham was sentenced to prison, the appeal was moot. The law in Kentucky is well-settled that in order to bring an appeal, a party must be aggrieved or prejudiced by the judgment or order below. *Civil Service Commission v. Tankersley*, 330 S.W.2d 392, 393 (Ky. 1959). Parties are not allowed to argue moot questions of law on appeal. *Id*. Additionally, an appeal may be considered moot and must be "dismissed where, due to subsequent events, the circumstances have changed so as to make the determination of the question unnecessary." *Sharp v. Robinson*, 388 S.W.2d 121 (Ky. 1965). In this case, after the order on appeal was entered, a judgment was immediately entered denying probation and sentencing Branham to 10 years in prison. The Commonwealth was certainly not aggrieved nor prejudiced by the court stating that Branham would have been eligible for probation had the court entered an alternative sentence. Effectively, the Commonwealth sought an advisory opinion from the Court of Appeals, which absent a case or controversy, the Court does not grant. *Associated Industries of Kentucky v. Com.*, 912 S.W.2d 947, 950-51 (Ky. 1995); *Philpot v. Patton*, 837 S.W.2d 491, 493 (Ky. 1992). The matter was dismissed as moot as there was no justiciable cause or controversy presented by the appeal.

XXIV. PROCEDURE

A. *Johnson v. Kearney*, 2024-CA-0683-MR, 2025 WL 1536078 (Ky. App. May 30, 2025). Opinion Reversing and Remanding by Cetrulo, J.; Karem, J. (concurs) and McNeill, J. (concurs).

A candidate for public office filed a lawsuit against an opponent for declaratory judgment, injunctive relief, and damages arising out of statements contained in campaign materials. The opponent responded with a motion to dismiss under UPEPA (Uniform Public Expression Protection Act), the recently enacted "anti-SLAPP" legislation. The trial court expressed belief that the initial lawsuit had been filed in good faith but encouraged the filer to voluntarily dismiss the suit. When the suit was then dismissed, the opponent sought attorney's fees for the filing of the UPEPA motion, arguing the Act requires such an award to the prevailing party. The Scott Circuit Court denied fees and, on appeal, the Court of Appeals reversed. Pursuant to the legislature's plain language, fees related to the filing of a UPEPA motion shall be awarded, even upon a responding party's voluntary dismissal. KRS 454.472 and KRS 454.478.

B. *Knipper v. Governor's Office*, 2024-CA-1186-MR, 2025 WL 1717034 (Ky. App. June 20, 2025). Opinion Affirming by Acree, J.; Thompson, C.J. (concurs) and Moynahan, J. (concurs).

Stephen Knipper was terminated from his position as Chief of Staff to former Lieutenant Governor Jenean Hampton. He appealed to the Personnel Board which affirmed his termination by a final order dated April 18, 2024. Knipper was entitled to institute an appeal by filing a petition in Franklin Circuit Court within 30 days of the final order. He did not. Instead, he filed a motion for the Board to alter, amend, or vacate the final order. The Board denied the motion. Knipper initiated a statutory appeal on June 7, 2024, after the 30-day window closed, and the Franklin Circuit Court dismissed the complaint as untimely. The Court of Appeals reviewed KRS

Chapter 13B, the chapter which governs the Board, and determined it does not permit a party to use or rely upon any of Kentucky's civil rules while a claim remains in the executive branch for decision. Knipper argued, for the first time in this proceeding, that his complaint should be treated as a petition for declaratory judgment. Disregarding preservation issues, the Court determined a declaratory judgment is not a substitute for such actions as they are particularly provided for, and a court cannot invade the jurisdiction of the Board by way of a declaratory judgment.

XXV. PRODUCT LIABILITY

Bauer v. Hyundai Motor America, Inc., 2022-CA-0649-MR, 2022-CA-0737-MR, 701 S.W.3d 843 (Ky. App. 2025). Opinion Affirming by A. Jones, J.; Caldwell, J. (concurs) and Taylor, J. (concurs).

After a severe vehicle accident, members of the Bauer family (Appellants) brought action against Hyundai Motor, alleging certain manufacturing defects in the 2013 Hyundai Tucson driven by Sandra Bauer contributed to the injuries sustained by its five occupants, three of whom died as a result. The Bauer family contended the front bumper welds were too short, and this product defect contributed to the severe injuries sustained. The jury returned a verdict for Hyundai, and the trial court entered a final judgment in accordance thereto. This appeal followed after the trial court denied the Bauer family's CR 59.01 motion for a new trial. Hyundai filed a cross-appeal, which was rendered moot. The Court of Appeals affirmed the trial court's judgment. First, the Appellants alleged Hyundai committed misconduct during discovery. The Court concluded the trial court was not provided a timely opportunity to consider discovery misconduct as the issue was raised for the first time in a post-judgment motion. Thus, the Court did not consider whether the trial court erred. Second, the Appellants alleged the trial court erred in permitting the introduction of Bates Numbered Document (Bates No.) 976 through the testimony of a fact witness. Hyundai sought to admit Bates No. 976 for the purpose of proving the proper length of the front bumper welds and that they were only required to be 30 millimeters in length. The Court concluded KRE 106 did not authorize admission of Bates No. 976 into evidence; moreover, it cannot be concluded the document was improperly admitted into evidence under KRE 803(6) and KRE 901(a). Any error in admitting Bates No. 976 or the fact witness's testimony would not warrant granting a motion for a new trial because the argument did not rest entirely on the fact witness's testimony. Third, the Appellants alleged there was insufficient evidence to support the jury's determination the welds were not defective. The Court concluded the Appellant's argument regarding insufficiency of evidence failed because it improperly shifted the plaintiffs' burden at trial, and Hyundai presented significant evidence to the jury indicating the product was not defective. The Court affirmed the judgment of the trial court in denying the Appellants' CR 59.01 motion on all three issues raised.

XXVI. PROPERTY LAW

A. *Wood v. Clewell*, 2023-CA-1019-MR, 695 S.W.3d 74 (Ky. App. 2024). Opinion Affirming by Cetrulo, J.; Goodwine J. (concurs) and Karem, J. (concurs).

In this appeal, the Court revisited its holding in *Johnson v. Akers Development, LLC*, 672 S.W.3d 205 (Ky. App. 2023), regarding right of redemption cases. Perry failed to

pay property tax liens. Clewell paid the liens and then purchased the property after filing for foreclosure. Perry then assigned his right of redemption pursuant to KRS 426.530 to Wood. Wood attempted to exercise the right of redemption within six months as required by statute by paying the purchase price plus 10 percent interest and reasonable costs allowed by the provisions of KRS 426.530. However, Wood did not pay or prove efforts to discover those reasonable costs incurred by the purchaser before expiration of the six-month window. A redeemer must make good faith efforts to ascertain and pay all costs within the statutory window in order to establish substantial compliance. The circuit court found Wood failed to do so, and the Logan Circuit Court was affirmed.

B. *Hernandez v. County Investments, LLC*, 2023-CA-0236-MR, 2023-CA-0255-MR, 696 S.W.3d 832 (Ky. App. 2024). Opinion Affirming in part and Reversing in part by McNeill, J.; Combs, J. (concurs) and Lambert, J. (concurs).

The Hernandezes appealed from a Jefferson Circuit Court judgment awarding $7,760 in damages to County Investments for unpaid rent, property damage, and attorney fees. County Investments cross-appealed. In 2014, County Investments obtained a quitclaim deed for a property in foreclosure. In September 2016, the Hernandezes entered into a rental agreement with County Investments to rent the property for one year at $1,100 per month. In December 2016, after learning the property was in foreclosure and would be sold at a judicial sale, the Hernandezes stopped paying rent. After the sale, County Investments exercised its right of redemption under KRS 426.530 to purchase the property and obtained a commissioner's deed in July 2017. The Hernandezes vacated the property in May 2017. County Investments filed a complaint seeking unpaid rent, attorney fees and costs, and sums due for damages to the property. The trial court held County Investments had the proper authority to enter into the lease agreement and was entitled to collect rent. After a subsequent hearing on damages, the trial court entered a final judgment awarding County Investments $4,400 for unpaid rent, $1,000 for property damages, and $2,360 for attorney fees.

On appeal, the Hernandezes raised multiple arguments. First, they argued the trial court erred when it determined County Investments had the authority to lease the property and collect rent in 2016. However, County Investments obtained a quitclaim deed in 2014. County Investments took the property subject to the mortgage lien, but the property owner was still entitled to lease the property out despite the property's foreclosure status. The Hernandezes further argued the trial court lacked subject matter jurisdiction because the amount in controversy was less than the $5,000 minimum required by statute. For jurisdictional purposes, the amount in controversy is determined based on the allegations in the complaint, not what the party is actually entitled to. Because County Investments sought $5,500 in unpaid rent and unspecified property damages, the trial court had subject matter jurisdiction over the claims. Finally, the Hernandezes alleged the attorney fees award was precluded by KRS 383.570(1)(c). The Court reversed the award of attorney fees because County Investments failed to property plead its claim for attorney fees under KRS 383.660(3). The Hernandezes argued next that the trial court's award for property damages was erroneous because it failed to make findings of fact to support the damages award.

Despite hearing testimony about specific damages to the property, it was still unclear for what the damage the $1,000 was awarded. It was testified that $3,500 in repair costs and other property damage was found, but the trial court's order was unspecific as to what repair cost the $1,000 award was going toward. Therefore, the award of $1,000 in damages was reversed and remanded for the trial court to make specific findings of fact, based on the evidence presented at the damages hearing, to support its damage award.

On cross-appeal, County Investments argued the trial court erred when it denied its motion to amend its complaint after four years had passed. Because time alone is not a sufficient reason to deny a motion to amend a complaint, the trial court erred when it denied County Investments' motion to amend its complaint. County Investments wanted to amend its complaint to seek the full eight months of rent due under its rental agreement with the Hernandezes. There was no reason to think the Hernandezes did not know they owed $8,800 under the lease agreement because the lease was for a full year and they only paid four-months' rent. County Investments argued it was entitled to the full eight months of unpaid rent owed under the lease agreement. When a party claims breach of contract, it must show it used reasonable efforts to mitigate its damages from the breach, and the party committing the breach has the burden of proving the party failed to mitigate its damages. Here, not only did the trial court place the burden of proof on County Investments when it should have been on the Hernandezes, it also erred when it determined County Investments had not attempted to mitigate its damages.

C. *Hamilton v. P.B. Stratton Family Partnership, LLC*, 2023-CA-0575-MR, 2023-CA-0577-MR, 2023-CA-0580-MR, 2023-CA-0663-MR, 709 S.W.3d 287 (Ky. App. 2024). Order and Opinion Affirming by Eckerle, J.; Caldwell, J. (concurs) and Cetrulo, J. (concurs).

This case involved complex issues dealing with quiet-title actions and trespass theories on boundary-line disputes and claims for ownership of the mineral royalties retrieved from mines and wells that were operated on the two properties at issue. There are many parties to the case; however the main groups are the Hamiltons, Colemans, Strattons, Comptons, Shelby Field, Cambrian Coal, EQT, and Dismissed Parties. Back in 1896, Nelson Hamilton conveyed a tract of land to his son, John Hamilton. There was no surveyed description of the property, just descriptions of natural monuments and surrounding boundaries. Surrounding tracts included the William Adkins patent, the John Dils tract, and the Peyton Justice patent. The deed included the Coleman tract. In 1898, Nelson Hamilton conveyed the adjoining track to James Hamilton and based part of the description in the 1898 deed upon the 1896 deed. The 1898 deed includes the tract claimed by the Hamilton parties and is the main focus of the action. The Colemans and Hamiltons hold clear title to their land as described in the 1896 and 1898 deeds. The dispute between the Hamiltons and Strattons stems from varying interpretations of the 1898 deed boundary. The dispute between the Hamiltons and Comptons is an offshoot of the Hamilton-Straton dispute. Karen Compton's predecessor, Slone, received a deed from the Stratton predecessor in 1963. Slone then passed the property on via two deeds in 2005 and 2006, as well as a residual section of his will. Karen Compton testified that her family

used and controlled the entire tract in the 1963 deed since she could remember. She testified Jimmy Hamilton told her he owned the property, which is the best proof of any party regarding adverse possession. Jimmy Hamilton acknowledged Mrs. Compton and her family met the requirements of open, continuous, exclusive, and notorious possession of the property. The trial court concluded the Colemans own the property in the 1896 deed from Nelson Hamilton to John Hamilton. The Hamiltons own the property in the 1898 deed to James Hamilton. The Strattons own the property in the 1924 commissioner's deed, with two exceptions. The Comptons own the surface tract as described in the 1963 deed to Slone both by record title and possession, as acknowledged by Jimmy Hamilton. The three families (Hamilton, Stratton, Coleman) own property within the bounds of their source deeds; however, a jury must decide the boundaries of these properties and damages. The Comptons own the surface interest. A total of five maps were submitted to the jury. The jury found the map that depicted the Hamiltons' property with more land to be accurate, as compared to the map that gave the Colemans' more property. The Strattons claim property interests that are derived from a 1924 court-ordered deed that was a result of a division of the Dils estate. Part of the Dils property borders part of the claimed land by the Hamiltons and Colemans. However, over years of conveyances of surface and mineral interests, the Strattons were left possessing only some of the gas, oil, and coal interests. As it relates to the various trespass and disgorgement claims, the Strattons, Colemans, and Hamiltons had all entered into leases for the rights to mine coal from their various property interests. Strattons leased to Shelby Fuel, later subleased to Cambrian. Colemans and Hamiltons also leased to Cambrian. The trial court directed a verdict in favor of the Strattons and Colemans on the trespass claims, as the Hamiltons had expressly consented to the mining activities. The trial court also directed a verdict in favor of the Colemans on a claim for disgorgement of royalties advanced to the Colemans. The jury determined the Hamiltons' boundary included the larger of the two properties at issue, but not the smaller one. They were also awarded royalties paid by Cambrian and the disgorgement of royalties received by the Strattons and Shelby Fuel.

The Colemans argued on appeal the trial court erred by instructing the jury in a manner that permitted a choice between various maps. They argued, along with the Strattons, that one call in the 1898 deed should be interpreted as a matter of law to be a straight line in accordance with *Carter v. Elk Coal Company*, 173 Ky. 378, 191 S.W. 294, 300 (1917), ending any factual dispute about whether the line should follow the meanders of the ridge found on the map. The Court held that *Carter* does not require that narrow of a result. The question here of where a line is located was one for the jury, as it was not as simple as the question presented in *Carter*. There was no error in this jury instruction. The next issue the Court analyzed was the trial court's decision to hold a jury trial in a quiet title action to determine where the property boundaries lay. The trial court held a bench trial to determine that the parties had valid legal title to the real property, but the jury trial was held to determine the physical boundaries of the property lines as it constituted a factual dispute. Boundary disputes often involve legal and factual questions. Due to the many factual questions at issue in this case, the trial court properly submitted the case to a jury to determine the physical locations of the property boundaries. The Court further held it was not error on part of the trial court to not permit an attorney for one of the parties

to testify. It was also not an abuse of discretion when the trial court did not allow an attorney for one of the parties to be deposed. The Court found no errors in the judgments or the trial court's rulings on the motions for judgment and motions for directed verdict.

D. *American Coal Terminal, Inc. v. Etera, LLC*, 2023-CA-0068-MR, 2023-CA-0250-MR, 699 S.W.3d 204 (Ky. App. 2024). Opinion and Order Reversing and Remanding Appeal NO. 2023-CA0068-MR and Dismissing Appeal NO. 2023-CA-0250-MR by Lambert, J.; McNeill, J. (concurs) and Taylor, J. (concurs).

These appeals involved two summary judgments relating to a breach of contract and foreclosure action filed against American Coal. The first appeal was of a monetary judgment and order of sale. The second appeal was from an *in rem* summary judgment relating to *ad valorem* tax liens. The Court reversed and remanded with respect to the first appeal and dismissed with respect to the second appeal. The first appeal concerned two promissory notes secured by real and personal property. The holder of the notes conducted a nonjudicial sale of the personal property to satisfy the outstanding balance of the notes before securing a judicial order authorizing the sale of the real property. The trial court entered summary judgment in favor of the holder. It also awarded the holder a judgment of almost $12 million, the claimed balance still outstanding on the notes before it sold the debtors' personal property. The appellant, SNR, defaulted on its loan obligations in 2021, and appellees, MidCap, accelerated the amounts due and owing under the notes and demanded immediate repayment. SNR failed to make any substantial payments after its default. MidCap filed suit against SNR for breach of contract and sought summary judgment.

However, MidCap altered the litigation by informing the involved parties of its intention to satisfy part of the outstanding balances of the notes by conducting a nonjudicial sale of SNR's personal property collateral. SNR filed a motion to enjoin MidCap from conducting the sale; however, the sale occurred before the trial court was able to hear SNR's motion. The motion was withdrawn and incorporated into SNR's response to MidCap's motion for summary judgment. Ultimately, the trial court entered summary judgment in favor of MidCap and awarded it almost $12 million, the amount MidCap claimed was the outstanding balance of the notes before it sold SNR's personal property and retained the proceeds. It also entered an order permitting MidCap to satisfy the entirety of that amount by selling SNR's real property. However, the trial court's order does not explain how it reached that result; it does not mention MidCap's nonjudicial sale, its "commercial reasonableness," or MidCap's receipt of $1.6 million in proceeds from the sale. MidCap's theory of recovery against SNR was breach of contract. Due to the circumstances of the case, MidCap should have been required to prove, among other elements, that it conducted its nonjudicial sale of SNR's personal property collateral in a commercially reasonable manner, and the trial court should have granted SNR an opportunity to conduct discovery in that regard.

The Court determined that MidCap was required to credit its proceeds from the nonjudicial sale towards the almost $12 million it claims was outstanding on its promissory notes. There was also not enough time for SNR to conduct discovery

between the sale and the trial court's order favoring MidCap. Further, the trial court should have allowed SNR to amend its answer to raise the issue of MidCap's alleged noncompliance with its obligation to dispose of the collateral in a commercially reasonable manner because the nonjudicial sale was governed by Article 9 of the UCC. The trial court abused its discretion when it denied SNR's motion to amend its answer. The Court reversed the trial court's order denying SNR's motion to amend its answer and reversed the trial court's summary judgment order. The Court also determined that SNR did not contractually waive its right to have its personal property collateral sold in a commercially reasonable manner, because parties cannot do so under KRS 355.9-602(7) and KRS 355.9-610(2). Remedies are provided under KRS 355.9-626 if commercial reasonableness was not used, and commercial reasonableness may not be waived pursuant to KRS 355.9-602(13).

The second appeal involved a second order of the trial court entered after it rendered its order for summary judgment, as discussed above. The second order adjudicated the validity and amount of tax liens held by appellees, Boyd County, and the Kentucky Revenue Cabinet. SNR argued on appeal the summary judgment from the first appeal divested the trial court of jurisdiction to enter its second order, rendering the second order void. The Court determined the order was not void because the trial court lacked jurisdiction but dismissed the appeal because that order was interlocutory.

E. *Yount v. Canada*, 2024-CA-0109-MR, 2024 WL 4996418 (Ky. App. Dec. 6, 2024). Opinion Affirming by Karem, J.; Combs, J. (concurs) and Caldwell, J. (concurs).

A home was foreclosed upon and sold to the bank. However, the former homeowner continued to reside on the property. The bank obtained a writ of possession. While the writ was pending, the bank sold the property. Eventually, the writ was served by the local sheriff's office. The former homeowner refused to leave and was ultimately arrested for trespass. The former homeowner filed suit against the sheriff, the deputy sheriffs, the bank, the purchaser of the property, and some of her relatives. She claimed she was a "tenant by sufferance" under KRS 383.185 and that two deputies unlawfully forced her to vacate the property with an invalid court order. As to a third deputy, she alleged he acted without lawful authority in arresting her and was guilty of false imprisonment. She alleged the sheriff was vicariously liable for the acts of his deputies based upon the doctrine of *respondeat superior*. Following a hearing, the circuit court held the deputies were acting within their powers in serving the writ of possession and had no duty to challenge its validity. The court further found the deputies had probable cause to arrest and remove the former homeowner from the property. After noting the former homeowner had not opposed the foreclosure action and sale, but remained on the property for several weeks, the trial court granted the motion to dismiss as to all the defendants. The former homeowner appealed. The Court affirmed the trial court. The Court found the requirements of KRS 383.195 were properly executed. Additionally, as to the negligence claim against the deputy sheriff, the Court agreed with the trial court that, as a matter of law, he was not negligent in carrying out his duties. Lastly, the Court concluded the former homeowner's argument that she was rightfully on the property as a tenant by sufferance was without merit. A tenancy by sufferance is inherently wrongful, and she remained

unlawfully on the premises upon the expiration of the notice provided under KRS 383.185.

F. *BOUG, LLC v. Shenandoah Holdings, LLC*, 2023-CA-1473-MR, 2024-CA-0285-MR, 707 S.W.3d 530 (Ky. App. 2025). Opinion Affirming by Easton, J.; Eckerle, J. (concurs) and Karem, J. (concurs).

These two appeals stemmed from an action to sell jointly owned property by judicial sale. The first appeal challenged the circuit court's granting of summary judgment, and the second appeal pertained to the refusal of a *supersedeas* bond. The Court affirmed the circuit court's rulings. Dr. James Crase purchased a commercial building (the "SMC Building") for his practice in such a way as to eventually have the title held jointly by a trust in which he and his wife had an interest and also in the name of his three children. Each child (Kit, Kim, and Karl) had a separate limited liability company ("LLC") for this purpose. After Dr. Crase and his wife died, the three children's LLCs became tenants in common with three equal shares of the SMC Building. The children ultimately decided to sell the SMC Building, and as tenants in common, they would divide the proceeds for any private sale evenly. However, the children were not successful in reaching any final agreement to sell.

Kim (owner of Shenandoah Holdings, LLC) no longer wanted to be a part owner of the SMC Building and filed the action for sale in circuit court naming her siblings' LLCs as necessary parties. Kit (owner of BOUG, LLC) filed a counterclaim and crossclaim, claiming breach of a fiduciary duty arising from the siblings' LLCs joint tenancy based on a refusal to proceed with a prior private offer to buy the SMC Building. Kim filed a motion for summary judgment on Kit's counterclaim, which the circuit court granted and issued in May 2023 holding that Kit failed to identify evidence of a fiduciary relationship. In December 2023, the circuit court entered its summary judgment dismissing Kit's crossclaim against Karl for the same reasons. Kit appealed these summary judgment decisions. Thereafter, the circuit court ordered the distribution of sale proceeds. (The SMC Building was sold by the Master Commissioner in February 2023 by an order of sale issued by the circuit court. The $700,000 sale proceeds were held in the master commissioner's escrow account.) Kit filed a motion to stay distribution, approval of bond, and exceptions to the circuit court's order requesting approval of her *supersedeas* bond and a stay of the distribution of funds under RAP 63. Kit wanted the proceeds belonging to her siblings held to make sure that funds would be available to pay damages if she were to be ultimately successful on her breach of fiduciary duty claims. After a hearing and some procedural filings, the circuit court ultimately denied Kit's motion to stay distribution and proposed *supersedeas bond* as insufficient under RAP 63(A)(1). The funds were disbursed. Kit appealed the circuit court's orders denying the *supersedeas* bond and order for immediate distribution of the proceeds.

As to the summary judgment decisions, the Court concluded the circuit court correctly granted them but erroneously concluded there was no fiduciary duty. Here, the siblings were determined to be joint tenants; however, Kit did not establish any actual breach of fiduciary duties. The Court rejected Kit's argument that the siblings were involved in a joint venture as it overlooked the informal element of joint venture,

which is distinguishable from joint ownership and tenancy in common. Additionally, Kit's argument for damages from the alleged breach of duty was based only on "ifs" and uncertainties. Ultimately, Kim exercised her right as a co-tenant to demand a judicial sale of the property as the siblings could not reach an agreement themselves.

Second, the Court found the circuit court did not abuse its discretion in denying the *supersedeas* bond to stay disbursement of the proceeds from the judicial sale of the SMC Building. RAP 63 allows a litigant to proffer a *supersedeas* bond to stay the enforcement of a judgment while the matter is on appeal. This was a case of a sale of jointly held property, not a case in which a monetary judgment was entered in someone's favor. To illustrate how a *supersedeas* bond may be applicable in a sale of jointly held property, the Court referred to *Lowery v. Madden*, 214 S.W.2d 592 (Ky. 1948). Therein, a buyer of jointly held property at a judicial sale who objected to some of the sale process could have offered to post a *supersedeas* bond to prevent execution of the judgment requiring him to pay the bid price as he was the only one with a judgment against him requiring payment. By contrast, here, the joint owners simply received a distribution of funds paid into court, not by execution of a judgment for or against them. The circuit court did not abuse its discretion in denying the *supersedeas* bond. The Court affirmed the circuit court on both appeals.

G. *Madison County Utilities District v. City of Richmond*, 2023-CA-1401-MR, 2025 WL 1006036 (Ky. App. Apr. 4, 2025). Opinion Reversing and Remanding by Caldwell, J. A. Jones, J. (concurs) and Taylor, J. (concurs).

This case arose from a dispute about water service to a Madison County property ("the property") recently annexed to the City of Richmond. Madison County Utilities District ("MCUD") appealed from an order ("the order") denying its motion for a temporary injunction and granting a motion for summary judgment in favor of the City of Richmond, Richmond Utilities, and A & R Contractors, LLC, (collectively "Appellees"), wherein the court rejected MCUD's argument that it had the dominant right to serve the property and determined the agreement to negotiate about other territories was unenforceable. MCUD argued the trial court misconstrued KRS 96.538(2) and KRS 96.150(1), erred by disregarding the contractual provisions to negotiate concerning other territories in good faith and in granting summary judgment.

The Court of Appeals reversed and remanded. First, the trial court erred in its overly narrow interpretation of terms in KRS 96.538(2). The trial court declared the use of the terms *providing service* and *being served* in KRS 96.538(2) and KRS 96.150(1) plainly meant only the actual delivery of water to a consumer on the property at issue. However, there can be more than one plain meaning of a term, especially in complex, specific contexts such as water service disputes. In short, the Court could not agree with the trial court that actual delivery of water to consumers is the only plain meaning of *being served* or *providing service* in this context. Statutes should be interpreted liberally to achieve their purposes. KRS 446.090(1). KRS 96.538(2) and KRS 96.150(1) reflect an implicit intent to provide protection from municipal encroachment for water districts that have invested in infrastructure to make service available to rural customers. The Court concluded it is unreasonable to narrowly

construe KRS 96.538(2)'s protection for water districts providing service in an area as only referring to actual delivery of water to consumers in the area. Thus, properly applying a broader definition of *providing service* and construing the evidence in light most favorable to MCUD for purposes of reviewing the summary judgment, MCUD was a utility providing water service in the annexed property at issue. MCUD has a dominant right under KRS 96.538(2) to continue providing water service to the property. Second, the Court found the trial court correctly held the contract provision at issue was unenforceable, and the Appellees had no duty to negotiate about water service to the property. The conclusion reached was well-supported by authority cited by Appellees and rendered any factual issues about negotiations or the lack thereof immaterial to resolving the parties' dispute about the water service rights to the property. Finally, the Court agreed the trial court erred in granting summary judgment. It was not convinced the Appellees have shown the non-existence of genuine issues of material fact or demonstrated that they are entitled to judgment in their favor. The Court reversed the trial court's grant of summary judgment in favor of Appellees and remanded the case.

XXVII. STATUTE OF LIMITATIONS

Executive Branch Ethics Commission v. Grimes, 2024-CA-0630-MR, 710 S.W.3d 8 (Ky. App. 2025). Opinion Affirming by Cetrulo, J.; Lambert, J. (concurs) and Taylor, J. (concurs).

This was an appeal from an order of the Franklin Circuit Court, which found the decision of the Executive Branch Ethics Commission to be barred by the statute of limitations. The Commission had fined former Secretary of State Alison Lundergan Grimes for actions alleged to have violated KRS 11A.120. The actions occurred in 2016 before the November election. However, the proceedings were not commenced until 2021, more than five years after the cause of action accrued. The Franklin Circuit Court reversed the Commission's action, finding it was filed outside the applicable statute of limitations set forth in KRS 413.120, which was created by the legislature when "no other time is fixed by the statute creating the liability." The Court affirmed. KRS 11A.120, the ethical violations statute at issue here, does not contain any limitations period and was enacted long after the General Assembly enacted KRS 413.120. If the legislature intended a specific or unlimited timeframe on such actions, it would have expressed that in KRS 11A.120 as it did in other sections of the Chapter. The Court further distinguished this proceeding from actions to discipline members of the bar by the Supreme Court, as those actions are not created by statute. Finally, the Court found the discovery rule did not apply to extend the statute beyond the five-year limitations period set by KRS 413.120, so the action was barred and the judgment affirmed.

XXVIII. STRICT LIABILITY

Hanna v. Shea, 2024-CA-0881-MR, 2025 WL 1478600 (Ky. App. May 23, 2025). Opinion Affirming by Easton, J.; Thompson, C.J. (concurs) and A. Jones, J. (concurs).

Appellant asked the Court to reverse summary judgment granted to Appellee on her claim for personal injury caused when she either tripped over, or was tripped, by Appellee's dog. Appellant contended strict liability imposed by KRS 258.235, often called the "dog-bite" statute, includes her claim. The Court affirmed the circuit court's summary judgment. Under

KRS 258.235, liability only arises from an intentional act which could reasonably be seen as a vicious or mischievous act directed toward the person of the plaintiff, such as an attack or bite. Even if a dog technically caused the injury, general principles of statutory construction and legislative intent tend to agree that the mere presence of a dog is not a dangerous condition, and there must be some intentional act which could reasonably be seen as a vicious or mischievous act directed toward the person of the plaintiff for strict liability to apply. The Court did not suggest the mere movement of a dog in its home is a dangerous or mischievous act as compared to some intentional application of force directed toward a person by a dog.

XXIX. TAXATION

Department of Revenue, Finance and Administration Cabinet v. Hale, 2023-CA-1192-MR, 707 S.W.3d 522 (Ky. App. 2025). Opinion Affirming by Acree, J.; Easton, J. (concurs) and McNeill, J. (concurs).

Pursuant to an audit, the Department of Revenue (DOR) determined that certain salads and spreads made by Lotsa Pasta are subject to taxation and assessed additional sales tax of $58,898.50 for the period of 2014 to 2017. Lotsa Pasta appealed to the Kentucky Board of Tax Appeals, which affirmed the DOR's determination. Lotsa Pasta then appealed to the Jefferson Circuit Court, which reversed, concluding the salads and spreads at issue were not "prepared food" under the statutory definition, and consequently the salads and spreads were not excepted from – but rather were subject to – the tax exemption for "food and food ingredients" reflected in KRS 139.485(2). The DOR appealed. At issue in this appeal was whether Lotsa Pasta's salads and spreads constituted "prepared food" under KRS 139.485(3)(g)(2), and if so, whether they were nonetheless subject to the food manufacturing exception under KRS 139.485(3)(h)(1). The Court examined the statutory definition of "prepared food" and ultimately rejected Lotsa Pasta's argument that because the salads and spreads at issue were prepared in bulk, they were not "prepared food," explaining the statutory definition merely required they be sold – not prepared – as a single item. Notwithstanding the Court's determination the salads and spreads constituted "prepared food" under the statute, the Court concluded the salads and spreads were still excepted – and thus exempt – pursuant to KRS 139.485(h)(1), because food manufacturing was Lotsa Pasta's primary activity. The Court affirmed the circuit court's reversal of the tax assessment.

XXX. TORTS

A. *Estate of Fuson by Hickman v. Mercy Regional Emergency Medical System, LLC*, 2023-CA-1242-MR, 2024 WL 3381440 (Ky. App. July 12, 2024). Opinion Affirming in Part, Reversing in Part, and Remanding by Thompson, C.J.; Combs, J. (concurs) and Lambert, J. (concurs). Discretionary review granted 3/12/2025.

The Court of Appeals held that KRS 413.170(1) tolls the usual statute of limitations for claims and allows a minor to bring a claim against a defendant at any time while he or she is a minor via a next of friend or guardian. A next of friend raising a claim for a minor does not start the running of the statute of limitations for all claims and does not preclude other claims from being raised later.

B. *Helmbrecht v. Bailey Jaynes Bakery and Café, LLC*, 2023-CA-1033-MR, 699 S.W.3d 197 (Ky. App. 2024). Opinion Affirming in Part, Reversing in Part, and Remanding by Acree, J.; Easton, J. (concurs) and Goodwine, J. (concurs).

This appeal involved the death of decedent, Chavez, who choked during a donut eating contest and was unable to be revived. The trial court granted Appellees summary judgment on all claims, as the claims were barred by the waiver Chavez signed when he entered the contest. It concluded that Helmbrecht's claim of willful or wanton negligence was not waived but failed as a matter of law. On appeal, Helmbrecht alleges the negligent, grossly negligent, and wanton and willfully negligent "provision of emergency medical services." The Court concluded the waiver Chavez signed is enforceable as to negligence as it satisfies the first prong of the *Hargis* test because it "explicitly expresses an intention to exonerate by using the word 'negligence.'" Additionally, negligence encompasses "gross negligence." The waiver was therefore enforceable as a bar to Helmbrecht's claim of gross negligence. However, the trial court erred when it concluded that Helmbrecht's claim of willful or wanton negligence was barred by the waiver, as the trial court failed to construe the waiver in a light most favorable to Helmbrecht. The waiver also cannot be construed as evidence of care. A warning that you might be harmed willfully or wantonly is not evidence of care, and the Kentucky Supreme Court has held that exculpatory contracts are unenforceable as to claims of willful or wanton negligence. Therefore, the trial court's order granting summary judgment was reversed as to Helmbrecht's claim of willful or wanton negligence and was otherwise affirmed. The matter was remanded for further proceedings consistent with the Court's opinion.

C. *Masonic Homes of Kentucky, Inc. v. Estate of Leist by and through Leist*, 2024-CA-0054-MR, 699 S.W.3d 868 (Ky. App. 2024). Opinion Affirming by Karem, J.; Thompson, C.J. (concurs) and Easton, J. (concurs).

Following the death of a resident of a long-term care facility, his estate and his beneficiaries filed suit alleging negligence and wrongful death. Additionally, a claim for loss of consortium was made on behalf of the decedent's wife. The facility moved to stay the proceedings and compel arbitration of the negligence claim. The trial court denied the motion, finding that the durable power of attorney did not give the decedent's agent the power to enter into an arbitration agreement on behalf of the principal. The facility appealed. The Court affirmed the trial court finding the durable power of attorney in question gave the agent power solely over the principal's property rights which do not include the power to agree to arbitration.

D. *Holland v. United Services Automobile Association*, 2024-CA-0254-MR, 707 S.W.3d 541 (Ky. App. 2025). Opinion Affirming by L. Jones, J.; Easton, J. (concurs) and Taylor, J. (concurs).

Appellants appealed the judgment entered following a jury trial of their Kentucky Unfair Claims Settlement Practices Act (KUCSPA) and Kentucky Consumer Protection Act (KCPA) claim against Appellee, as well as orders entered on their post-trial motions. Appellants claim the circuit court made three errors: (1) not granting their motion for a directed verdict on the issue of coverage; (2) instructing the jury

that a "substantial factor" causation test applies under the KCPA; and (3) finding Appellee to be the prevailing party for purposes of the KCPA. The Court affirmed the circuit court on all claims. Appellants carried a homeowner's insurance policy with Appellee. The case centered around the Appellee's refusal to repair water damage to the Appellants' home following a period of heavy rains in June 2019. While some claims and damages were resolved and paid in mediation, the Appellee claimed that damage and repair of the deteriorated fiberboard layer was not covered by the insurance policy. During a six-day trial, the parties disputed whether the fiberboard damage was covered under the policy, Appellee's conduct in investigating and handling the Appellants' claim, and how Appellee's conduct affected the Appellants.

On the fifth day of trial, just before the lunch break, Appellee made a motion for a directed verdict on all claims, stating that Appellants failed to satisfy the three-part bad faith test set forth in *Wittmer v. Jones*, 864 S.W.2d 885 (Ky. 1993). While arguing for directed verdict, Appellee largely conceded there was a significant factual dispute as to whether or not damage was covered under the policy. After hearing argument from Appellants, the circuit court denied the Appellee's directed verdict motion. Immediately following the lunch break, and before Appellee presented its case-in-chief, Appellants made a motion for directed verdict "on the limited issue of coverage," arguing Appellee had conceded the issue of coverage as to the first element of *Wittmer* when arguing its directed verdict motion. After hearing arguments from Appellee, the circuit court denied Appellants' motion for a limited directed verdict. As to this challenge, the Court found the directed verdict motion was procedurally deficient and properly denied. Appellee had not yet formally rested its case on the record nor had Appellee formally waived any right to call any witnesses. Additionally, a directed verdict motion made by a plaintiff can never be granted unless all elements of a claim are established, and no disputed issues of fact exist upon which reasonable minds could differ. Here, however, Appellants only sought a directed verdict as to one element of *Wittmer*. This was another reason why the first directed verdict motion was procedurally deficient and properly denied.

Thereafter, the trial court brought the jury back to the courtroom and directed Appellee to present its case-in-chief. Appellee chose not to present any evidence, rested its case, and the jury was discharged for the day. Appellants made a second motion for directed verdict on both the KUCSPA and KCPA claims based upon what they alleged were admissions of Appellee regarding the "false conduct" of one of the engineers, "coverage payments," and unreasonably "withholding the payment of the coverage." The trial court denied the second motion for directed verdict, which the Court affirmed. Although this second motion for directed credit was made after the close of Appellee's case, it lacked specificity and violated CR 50.01 requirements. Appellants did not state with specificity how the proof at trial established the elements of any claim, and the trial court properly denied the second directed verdict motion.

Next, relevant to this appeal, Appellants claimed the jury instructions were erroneous as to their KCPA claim, as those instructions required an additional finding of causation not required by statute. After determining the issue was properly preserved, the Court concluded the trial court did not err by including the substantial

factor language, finding the test is appropriate to determine causal nexus. The KCPA requires a causal nexus to show a plaintiff's ascertainable loss was the result of the defendant's conduct. In other words, the plaintiff must show the wrongful conduct was the cause-in-fact of his ascertainable loss.

Finally, Appellants claimed the trial court erred in finding Appellee the prevailing party under the KCPA because the jury found Appellee in acts proscribed by the KCPA and their breach of contract claim was settled through mediation for the amount they demanded. The Court agreed with the trial court that Appellee was the prevailing party. While a jury may find a defendant engaged in acts that violated KRS 367.170(1), that alone does not make a plaintiff the prevailing party in a KCPA claim. The plain language of KRS 367.220(3) requires the prevailing party be the successful litigant of a claim brought under that section. The KCPA claim is established by KRS 367.220(1), which requires not only proof that a defendant engaged in acts violating KRS 367.170(1), but also proof of a causal connection between those acts and an ascertainable loss suffered by the plaintiff. Here, Appellants cannot be the prevailing party on their KCPA claim because the jury found Appellants did not establish the required causal connection. Additionally, any relief obtained on the contract claim comes from a settlement agreement. The United States Supreme Court has described a "prevailing party" as "one who has been awarded some relief by the court." *Buckhannon Bd. and Care Home. Inc. v. West Virginia Dept. of Human and Health Resources*, 532 U.S. 598 (2001). This claim was extinguished without any determination on the merits by the court.

E. *Jajic v. Sainato*, 2023-CA-0956-MR, 2023-CA-1021-MR, 2025 WL 807663 (Ky. App. Mar. 14, 2025). Opinion Affirming in Appeal No. 2023-CA-0956-MR and Affirming in Part, Reversing in Part, and Remanding in Cross-Appeal No. 2023-CA-1021-MR by Cetrulo, J.; Eckerle, J. (concurs) and McNeill, J. (concurs).

This was an appeal from a Jefferson Circuit Court jury verdict assessing over $1 million in damages for appellee, Sainato. The case arose from a sexual encounter that occurred between Jajic and Sainato when they were both staying at a Marriott hotel in Louisville. A dram shop claim was also made against the Marriott, and the jury found in the Marriott's favor. The jury found Jajic committed a civil battery against Sainato. The trial court then instructed the jury to apportion fault for the battery. The jury apportioned 55 percent of the fault to Jajic and 45 percent to Sainato and awarded punitive damages and 45 percent of the compensatory damage verdict to Sainato. Jajic appealed by asserting insufficiency of the evidence, evidentiary errors, that the punitive damages should have also been apportioned, and the verdict was the result of passion and prejudice. Sainato cross-appealed by asserting: 1) the trial court erred in granting summary judgment to Marriott on the negligence claim; 2) a spoliation instruction should have been granted; and 3) the evidence was insufficient to support apportionment of the verdict against Sainato. The Court affirmed the trial court on each claimed error, except for the apportionment of fault for the civil battery. In a matter of first impression, the Court held Kentucky law does not permit including a non-tortfeasor victim of a civil battery within a comparative fault analysis. While KRS 411.182 requires apportionment in all torts, only parties at fault may be included in the apportionment analysis. Since the jury determined that Sainato did not

consent to sexual contact with Jajic, no fault could legally be apportioned to her, a non-tortfeasor. While Kentucky case law is not specifically on point, the Court's application of comparative fault is consistent with how the Commonwealth's courts treat the doctrine. *See Sommerkamp v. Linton*, 114 S.W.3d 811 (Ky. 2003); *see also Roman Catholic Diocese of Covington v. Secter*, 966 S.W.2d 286 (Ky. App. 1998). The Court further found that an incorrect sequencing of the jury instructions and lack of an explicit instruction as to Sainato's duties exacerbated the prejudicial effect of the improper instruction. Accordingly, the Court reversed and remanded the case for a new trial.

XXXI. WORKERS' COMPENSATION

A. *General Motors, LLC v. Smith*, 2024-CA-0367-WC, 694 S.W.3d 59 (Ky. App. 2024). Opinion Affirming by Karem, J.; Cetrulo, J. (concurs) and Goodwine, J. (concurs).

The employer petitioned for review of the Workers' Compensation Board's (Board) opinion affirming the Administrative Law Judge (ALJ) wherein he awarded temporary total disability benefits (TTD), permanent partial disability benefits (PPD) enhanced by the three-multiplier, and medical expenses. The Court affirmed the Board opining that an award of TTD must meet both the statutory definition of TTD under KRS 342.0011(11)(a) and comport with the language of KRS 342.040(1) regarding how long an employee must be disabled to qualify or disqualify for payments. Additionally, when determining if an employer is owed credit towards TTD payments made, the Court held the employer must provide evidence to establish the employee's gross wages minus applicable taxes. Lastly, the Court agreed with the Board that the ALJ's interpretation of the facts was supported by substantial evidence and therefore application of the three-multiplier would not be disturbed.

B. *General Motors v. Woods*, 2024-CA-0091-WC, 699 S.W.3d 874 (Ky. App. 2024). Opinion Affirming by Caldwell, J.; Cetrulo, J. (concurs) and Eckerle, J. (concurs in part, dissents in part, files separate opinion).

Woods filed a workers' compensation claim in May 2022. At the final hearing in April 2023, the ALJ found Woods reached maximum improvement on November 7, 2022, and that Woods would be permanently partially disabled with an impairment rating of 21 percent. GM argued the ALJ improperly included a payment for "vacation PR payoff" in GM's records when calculating Woods' average weekly wage. KRS 342.140 governs the calculation of an employee's average weekly wage, and the parties agreed the quarter preceding Woods' injury was her most favorable. In the week ending January 23, 2022, GM paid Woods a total of $2,915, but crossed out a payment of $1,384.32 marked as "vacation PR payoff" and another $120 for "overtime paid." Woods argued to include the amount GM removed. The ALJ accepted Woods' argument, and calculated Woods' average weekly wage to be $972.53. The Board affirmed the ALJ's decision. The Court determined there was no reversible error in the Board's affirming the ALJ's calculation of Woods' average weekly wage. The ALJ's calculation of Woods' average weekly wage was a realistic assessment of Woods' earnings, and the ALJ could have reasonably inferred that the $1,384.32 payment noted on GM's wage records as some type of vacation payoff was to make up for

other times in the 13-week quarter in which Woods received $0 in wages. With no error committed by the Board when it supported the ALJ's decision, the Court affirmed. It also declined to address GM's constitutional challenge to KRS 342.040 because GM did not show that it provided the Attorney General with notice of the response to its petition for review in contravention of RAP 49(G)(3). Judge Eckerle concurred with the majority's conclusion that the Court should not address the constitutional issue because GM did not comply with the Rules of Appellate Procedure. However, she dissented from the ruling on the merits that Woods met her burden of proving her average weekly wage.

C. *Kentucky Employers' Mutual Insurance v. Hall*, 2024-CA-1021-WC, 2024 WL 4714483 (Ky. App. Nov. 8, 2024). Opinion Reversing and Remanding by Cetrulo, J.; Caldwell, J. (concurs) and A. Jones, J. (concurs).

This was the third appeal to the Court of Appeals from rulings of the ALJ and Workers' Compensation Board. The issues in this appeal were rather novel, raising questions as to proper joinder of insurance carriers as parties to a compensation proceeding and the timeliness and responsibility for certification of coverage on a claim. The Court reversed the ALJ and Board in this matter, finding the ALJ erred in placing responsibility to certify coverage on the carrier initially named in the action. The ALJ also erred in finding KEMI's request untimely as the statute does not establish a timeline for subsequent certification when a carrier is found not responsible. The Court also reversed the Board's ruling below. Both carriers had sought to intervene before the Board to resolve this coverage issue. The Board ruled the two carriers were not parties to the action, and this was now a dispute between two insurers, better suited for a circuit court action. The Court disagreed with the Board, finding the provisions of the Kentucky Workers' Compensation Act require questions as to the responsible carrier to be determined by the factfinder. This is consistent with the Act's intent and purpose and exclusive remedy provisions. The matter was reversed and remanded for a determination of the proper carrier responsible for the benefits previously awarded to Mr. Hall.

D. *Norton Healthcare v. Murphy*, 2024-CA-0444-WC, 2024 WL 4714480 (Ky. App. Nov. 8, 2024). Opinion Reversing and Remanding by Eckerle, J.; Goodwine, J. (concurs) and McNeill, J. (concurs).

This was the third appeal to the Court of Appeals from rulings of the ALJ and Workers' Compensation Board, wherein the Board reversed the ALJ's ruling. The issues in this appeal included 1) whether the Board incorrectly treated the Appellee's application as an occupational disease under KRS 342.0011, and 2) whether the Board improperly directed the ALJ to apply standard of proof for causation in occupational diseases. First, the ALJ and Board properly considered the Appellee's petition as an injury claim within the meaning of KRS 342.0011(1) as a communicable disease such as COVID-19 is compensable as an injury when the claimant established the risk of contracting the disease is increased by the nature of her employment. Second, the Court concluded the ALJ applied the proper standard of proof to the controlling aspect of Appellee's claim and his conclusion was supported by substantial

evidence. Thus, the Court reversed the Board's opinion and order and remanded with directions to reinstate the ALJ's opinion and order dismissing Appellee's claim.

E. *Ford Motor Company v. Badall*, 2024-CA-0796-WC, 2024-CA-0932-WX, 707 S.W.3d 10 (Ky. App. 2025). Opinion Affirming by Caldwell, J.; Thompson, C.J. (concurs) and Acree, J. (concurs).

Ford Motor Company (Ford) petitioned for review of an opinion of the Board affirming the ALJ's decision awarding Badall enhanced permanent partial disability (PPD) benefits upon reopening. Badall cross-petitioned for review, challenging the ALJ's denial of temporary total disability (TTD) benefits for the nearly three-year period between the filing of Badall's motion to reopen and his undergoing a surgery, which was approved by an ALJ a few months after the filing of Badall's motion to reopen. The Court of Appeals affirmed. Due to his work as a forklift operator for Ford, the ALJ found Badall had suffered a cumulative trauma injury to his back which manifested on January 7, 2013. The ALJ found Badall was medically released to return to work with restrictions on or about March 28, 2013. Badall had returned to work full-time in other positions since April 2013, earning the same wages as before his injury. The ALJ noted Badall was not seeking application of the two- or three-multipliers in KRS 342.730 in his brief. The ALJ awarded Badall TTD benefits from January 7, 2013, through March 28, 2013. The ALJ also awarded Badall PPD benefits with no statutory multipliers for 425 weeks with those benefits suspended during periods of TTD and subject to the limitations set forth in KRS 342.730(4) as of January 7, 2013. Lastly, the ALJ ordered that Badall shall recover from Ford benefits for medical care required for the cure and relief of his back injury. Neither party filed a petition for review.

Badall retired from Ford as of May 1, 2016. In March 2018, Ford filed a motion to reopen to assert a medical fee dispute, in which Ford challenged Badall's request for back surgery, alleging it was not medically necessary and/or not related to the work injury. However, in May 2018, the claim was returned to the Frankfort motion docket for consideration of a motion to reopen for worsening, as it was found to be beyond the scope of the ALJ's medical fee dispute docket. In June 2018, Badall filed a motion to reopen, checking a box on a form indicating the basis was a change of disability, but requesting in his motion additional TTD and/or PPD. The Chief ALJ entered an order passing Badall's motion to reopen for TTD should he prevail on the request for surgery, pending a decision on the medical fee dispute. In November 2018, an ALJ entered an interlocutory opinion and order resolving the medical fee dispute in Badall's favor and ordered that TTD shall be paid beginning on the date of surgery and upon reaching maximum medical improvement, either party may motion to terminate TTD and place the claim on the active docket. Badall underwent the requested back surgery on August 11, 2021, and Ford began paying TTD as of that date. Ford filed a motion to terminate TTD as of December 26, 2021, when Badall reached the age of 70. The ALJ granted this motion.

Thereafter, Ford asserted another medical fee dispute. After presenting proof, the ALJ issued an opinion, order, and award in December 2023 ("ALJ decision on reopening"). The ALJ awarded Badall enhanced PPD benefits (two-multiplier) for the period from Badall's May 2016 retirement until December 26, 2021, with interruptions for periods

of TTD. The ALJ also awarded Badall TTD benefits from the August 2021 date of surgery until December 26, 2021. However, the ALJ denied Badall's request for TTD during the time frame between the date Badall's motion to reopen was filed (June 4, 2018) and the date surgery occurred (August 11, 2021). The ALJ denied the parties' petition for reconsideration, and both parties appealed to the Board. The Board affirmed the ALJ decision on reopening in an opinion entered June 7, 2024 (Board opinion). This appeal followed.

First, Ford contended the Board erred in affirming the ALJ's decision on reopening and the award of enhanced PPD applying the two-multiplier in KRS 342.730(1)(c)2., arguing its application was barred by *res judicata*. In the alternative, Ford argued the ALJ erred in retroactively ordering the enhancement prior to the date Badall filed his motion to reopen. The Board, agreeing with the ALJ, found application of the two-multiplier vested automatically upon Badall's retirement, and by operation of law, "KRS 342.730(1)(c)2. clearly entitles an injured worker earning the same or greater wages to the enhanced PPD benefits during any cessation of work during the applicable period of benefits." Thus, based on the plain language of the statute, the Board concluded that since Badall never returned to work after his retirement and was not entitled to TTD benefits prior to the surgery, he was entitled to enhanced PPD benefits by operation of law from May 2, 2016, until the date of surgery (August 11, 2021). The Court discerned no reversible error in the Board's rejection of Ford's *res judicata* argument.

Second, Ford contended the Board erred in affirming the ALJ's determination that enhancement of PPD benefits commenced upon Badall's retirement in May 2016 despite Badall's not filing his motion to reopen until June 2018. Ford contends the ALJ and Board misconstrued the Kentucky Supreme Court's ruling in the unpublished opinion *Muthler v. Climate Control of Kentucky*, Nos. 2010-SC-000302-WC and 2010-SC-000334-WC, 2011 WL 1642447 (Ky. Apr. 21, 2011). Therein, the Supreme Court upheld the Board's conclusion that such enhanced benefits could commence prior to the filing of a motion to reopen pursuant to KRS 342.730(1)(c)2. Likewise, here, the Court found no error by the Board.

Next, the Court considered Badall's cross-petition for review of the denial of TTD benefits for the period between the June 2018 filing of his motion to reopen and his back surgery on August 11, 2021. Badall argued he was entitled to TTD based on his assertions he was unable to return to the employment he had at the time of his injury and was not at maximum medical improvement (MMI) when he filed his motion. Examining the definition of TTD within the meaning of KRS 342.0011(11)(a) and MMI in the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, the ALJ found Badall was at MMI, and so was ineligible for TTP benefits during this contested period. Badall did not challenge in his cross-petition the ALJ's finding, affirmed by the Board, that he offered no evidence explaining the nearly three-year delay between the November 2018 interlocutory order approving the surgery and his undergoing surgery in August 2021. Nor did Badall cite to any evidence of record explaining the delay in his undergoing surgery or cite any authority to support his contention that such delay has no bearing on determining whether he

was at MMI or entitled to TTD during the contested period. The Court discerned no reversible error in the Board's affirming the ALJ on this issue.

F. *Harper v. Premier Ink Systems, Inc.*, 2024-CA-1091-WC, 709 S.W.3d 273 (Ky. App. 2025). Opinion Affirming by Taylor, J.; A. Jones, J. (concurs) and L. Jones, J. (concurs).

This was an appeal from a Board order declining to review a subrogation agreement between Christopher Harper's (Harper) former employer, Premier Ink Systems, Inc. (Premier), its insurance carrier, Chubb Insurance Group (Chubb), and third-party alleged tortfeasors, AmScan, Inc. (AmScan) and AmScan employee Michael Hughes, citing lack of jurisdiction. The Court of Appeals affirmed. Harper was injured while visiting AmScan as part of his job duties and filed a claim for workers' compensation benefits from Premier. Harper and Premier entered into a settlement agreement, and Premier agreed to pay Harper $100,000 as a lump sum benefit. Harper filed a separate tort action against AmScan and Hughes, and Premier filed an intervening complaint seeking subrogation for workers' compensation benefits paid to Harper. Unbeknownst to Harper and prior to any resolution, Premier, through Chubb, entered in a subrogation agreement with AmScan and Hughes in which AmScan and/or Hughes agreed to pay Chubb $65,000. Premier, Chubb, AmScan, and Hughes filed a stipulation and sought dismissal of all claims between one another. Harper objected, arguing Premier's claims were only derivative of his own and he had not been included in the negotiations, contending he was entitled to a *pro rata* share of costs and attorney's fees pursuant to KRS 342.700. Upon further motion by Harper, the circuit court remanded the settlement agreement between Premier/Chubb and AmScan/Hughes to the ALJ for approval. In a perfunctory order, the ALJ denied Harper's motion, stating in part that it is for the circuit court to decide the extent of an employer's subrogation interest, if any. Harper appealed to the Board, which affirmed the ALJ. Harper then petitioned the Court for review. The only issue to decide on appeal was whether the Board was correct in its determination it lacked jurisdiction to review the settlement/subrogation agreement between Premier/ Chubb and AmScan/Hughes. The Court concluded the dispute between Premier/Chubb and AmScan/Hughes concerns reimbursement benefits already paid to Harper and does not arise under a statutory provision of KRS Chapter 342. The circuit court did not have jurisdiction to remand the case to the Board, and Harper failed to show any provision of KRS Chapter 342 confers jurisdiction to the ALJ and the Board over AmScan or Hughes under the facts of this case. Therefore, the Board did not have jurisdiction to resolve the issue, including review of the settlement agreement.

G. *Starr v. Graybar Electric*, 2024-CA-1421-WC, 2025 WL 1271681 (Ky. App. May 2, 2025). Opinion Reversing and Remanding by Cetrulo, J.; Caldwell, J. (concurs) and A. Jones, J. (concurs).

This appeal from a decision of the Board centered upon the application and interpretation of a prior decision of the Court in *Bowerman v. Black Equipment Company*, 297 S.W.3d 858 (Ky. App. 2009). The ALJ in this case construed *Bowerman* as barring amendment of a prior finding, despite recognition there was a mistake in that prior interlocutory order. This opinion clarified that *Bowerman* does not preclude

the exercise of discretion to correct a mistake in an interlocutory ruling. That case holds only that an ALJ may not reverse a dispositive factual finding in a subsequent ruling absent a showing of new evidence, fraud, or mistake. Here, there was both new evidence and a demonstrated mistake. The matter was remanded for consideration of that information consistent with the discretion afforded to the ALJ.

XXXII. WRONGFUL DEATH

A. *BLC Lexington SNF, LLC v. Townsend*, 2023-CA-0960-MR, 2025 WL 568786 (Ky. App. Feb. 21, 2025). Opinion Affirming by McNeill, J.; Acree, J. (concurs) and L. Jones, J. (concurs).

The key matter on appeal regarded statutory interpretation of Kentucky's wrongful death statute and whether the wrongful death claims at issue are subjected to arbitration. Affirming the trial court, the Court concluded the wrongful death claims in the present case are not subject to arbitration as the claimants were not signatories to the arbitration agreement at issue. Appellee is Bonnie Townsend, executrix of the estate of Linda Elam and on behalf of the wrongful death beneficiaries (Estate). The wrongful death beneficiaries are Ms. Elam's grandchildren (Grandchildren). Appellants are BLC Lexington SNF, LLC d/b/a Brookdale Richmond Place SNF d/b/a Richmond Place Rehabilitation and Health Center (BLC), *et. al.* Elam was a resident at BLC's nursing home facility, admitted on June 15, 2020. Townsend, Elam's sister, signed an arbitration agreement in her capacity as Elam's representative on that same day. On July 8, 2020, Elam was discharged from BLC and admitted to hospice care, where she passed away on July 13, 2020. Appellee, in her capacity as executrix of Elam's estate, filed a tort action against Appellants in Fayette Circuit Court. An amended complaint was filed nine months later asserting a wrongful death claim on behalf of Grandchildren. After the initial complaint was filed, however, BLC filed a petition with the U.S. District Court for the Eastern District of Kentucky against Townsend to compel arbitration. The two cases proceeded simultaneously until the BLC's motion to compel was granted by the U.S. District Court. As a result, Townsend was enjoined from further litigating the state action. Grandchildren's wrongful death claims were permitted to proceed. A stay order was issued, and then lifted, in the state action. BLC filed two separate motions to dismiss based on the federal order compelling arbitration. The Fayette Circuit Court denied the second motion to dismiss. BLC appealed from that order to the Court as a matter of right. It raised multiple issues, including whether the wrongful claims Townsend is asserting on behalf of Grandchildren belong to the Estate pursuant to Kentucky's wrongful death statute, thus subjecting those claims to arbitration. The Court concluded that it does not. The Court's analysis hinged on interpretation and application of KRS 411.130. Appellants argue that because Elam has no surviving parents, spouse, or children who have raised claims in this case, the Grandchildren's claim (or any claim of any "kindred more remote than those above named [in sections (a)-(d)]" of KRS 411.130(2)(e)) belongs to Elam's estate. However, the Court disagreed, stating KRS 411.130 is a distributive provision, not a restraint on potential claimants. "[K]indred more remote than those above named" denotes a category of persons whose consanguinity is more remote than those relatives expressly enumerated within KRS 411.130(2)(e). Continuing, the Court stated that under

Kentucky law, a decedent or representative of a decedent cannot bind a wrongful death beneficiary to an arbitration agreement. *Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581, 597-99 (Ky. 2012). In 2015, in *Extendicare Homes, Inc. v. Whisman*, 478 S.W.3d 306 (Ky. 2015), the Supreme Court confirmed its holding in *Ping*, 376 S.W.3d 581, setting forth that "a wrongful death claim is a distinct interest in a property right that belongs only to the statutorily-designated beneficiaries. Decedents, having no cognizable legal rights in the wrongful death claims arising upon their demise, have no authority to make contracts disposing of, encumbering, settling, or otherwise affecting claims that belong to others. The rightful owners of a wrongful death claim, the beneficiaries identified in KRS 411.130(2), cannot be bound to the contractual arrangements purportedly made by the decedent with respect to those claims." *Id.* at 314. In applying KRS 411.130 and the relevant case law, the wrongful death claims belong to the Grandchildren, who were not signatories to the arbitration at issue. Thus, wrongful death litigation may proceed on behalf of claimants unencumbered by alternative dispute resolution agreements. The trial court's order was affirmed.

B. *Jervis v. Webster County Coal, LLC*, 2023-CA-1471-MR, 2025 WL 645134 (Ky. App. Feb. 28, 2025). Opinion Affirming by A. Jones, J.; Thompson, C.J. (concurs) and Lambert, J. (concurs).

In a direct appeal from the trial court's order granting summary judgment to Appellee, the Court of Appeals affirmed. The incident underpinning the case was the death of one of Appellee's employees at the hands of another employee during a personal dispute. Appellant, representing the Estate of the deceased employee, filed suit against the Appellee for personal injury, wrongful death, and loss of consortium claims. The trial court granted summary judgment on two separate grounds: (1) the claims were time-barred by a contractual limitations period signed by the deceased employee as a condition of employment; and (2) there were no genuine issues of material fact supporting the claims. The Court of Appeals disagreed, in part, with the trial court's first line of reasoning. KRS 336.700(3)(c) allows an employer to "require an employee or person seeking employment to execute an agreement to reasonably reduce the period of limitations for filing a claim against the employer[.]" However, the deceased employee could only bargain away rights that belonged to him specifically. Accordingly, the trial court correctly granted summary judgment on this ground regarding Appellant's personal injury claims, as those belonged to the decedent. However, the wrongful death and loss of consortium claims were not likewise time-barred, as those claims belong to the statutory beneficiaries and were not subject to the decedent's employment agreement. Nevertheless, the Court affirmed the trial court's summary judgment on the remaining claims using the trial court's alternative reasoning, which is that there were no genuine issues of material fact supporting them. Citing the Kentucky Supreme Court's decision in *Papa John's Intern., Inc. v. McCoy*, 244 S.W.3d 44 (2008), the Court concluded an employer can only be held vicariously liable under the doctrine of *respondeat superior* if the employee's tortious conduct occurred within the scope of his employment. Neither of the employees in this case were acting in the scope of their employment during the entirely personal altercation that led to the death. Furthermore, Appellant's other arguments regarding negligent hiring/retention and negligent supervision were likewise meritless. There was no evidence the surviving employee had a history of

workplace violence or aggression, countering the allegation of negligent hiring. Finally, Appellee had no legal duty to supervise or intervene in this personal dispute between employees. There was no history of workplace violence or threats between the employees, the altercation arose from a private matter unrelated to their employment, it occurred offsite, and the altercation did not occur during the surviving employee's shift.

FOR YOUR INFORMATION ...

The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2025 Kentucky Law Update is presented as a one-day, in-person program at nine different locations across the state. The 2025 On-Demand Kentucky Law Update is available virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs combined offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement **close to home and at no cost!** Judges can also earn continuing judicial education credits through the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of experience level. It is supported by membership dues and is, therefore, every member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that Kentucky practitioners encounter daily. As such, the program serves both the general practitioner and those who limit their practice to specific areas of law. The Kentucky Law Update program is not intended to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the day-to-day practice of law.

About the Written Materials and Presentations

The KLU written materials are the result of the combined efforts of numerous dedicated professionals from around Kentucky and elsewhere. The KBA gratefully acknowledges the following individuals who graciously contributed to this publication:

Jared Burke
Robbie O. Clements
Rebekah Cotton
Stephen Embry
Jennifer Gaytan
Tressa Hamilton
Eric Harris
Robert A. Jenkins
Nima Kulkarni
Lori J. Reed
Jeffery L. Sallee
Sarah-James Sendor
Nichole Shelton
Misty Clark Vantrease
B. Scott West

Special Acknowledgments

Special thanks to the following KBA Sections, Committees, and other organizations whose participation and assistance with the 2025 Kentucky Law Update programs have been invaluable:

AppalReD Legal Aid
Casey Bailey & Maines PLLC
FNF Family of Companies
KBA Criminal Law Section
KBA Elder Law Section
KBA Law Practice Committee
KBA Office of Bar Counsel
Kentucky Access to Justice Commission
Kentucky Court of Appeals
Kentucky Legal Aid
Lawyers Mutual of Kentucky
Legislative Research Commission
Legal Aid of the Bluegrass
Legal Aid Society
New Americans Initiative
Supreme Court of Kentucky

Presentations are also made on a voluntary basis. To those who volunteer in this capacity, special gratitude is owed. Individuals who contribute to this program support the professional development of all members of the Kentucky Bar Association. We wish to express our sincere appreciation in advance to these individuals.

A special acknowledgment to the organizations, authors, presenters, moderators, and other 2025 Kentucky Law Update program volunteers will appear in the January 2026 issue of the *Bench & Bar*.

CLE and Ethics Credit

The one-day, in-person 2025 Kentucky Law Update program is accredited for 6 CLE credits, including 2 ethics credits. The 2025 On-Demand Kentucky Law Update is accredited for 9.25 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction, as noted on the agendas provided on the KBA website.

The Kentucky Bar Association's 2025 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state to state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out-of-state information for the on-demand sessions will be available on the program website.

Kentucky judges: don't forget you can claim CJE credit for attending this program.

REMEMBER: Reporting attendance credits is now done online. Visit the Kentucky Bar Association website for reporting information. The activity numbers for the in-person and on-demand programs are listed on the corresponding agendas and must be used to report credits through the Member CLE Portal.

Evaluations

The 2025 Kentucky Law Update is *your* program, and your input *is* valued and needed. Links to the program evaluations for the live, in-person programs will be provided to all registrants via email. A link for the on-demand evaluation will be located on the program webpage. Please take a few minutes to complete the evaluation. We appreciate your assistance in improving this program.

Kentucky Bar Association
2025-2026 Board of Governors

Todd V. McMurtry
President
Ft. Mitchell

Matthew P. Cook
President-Elect
Bowling Green

J. Tanner Watkins
Vice President
Louisville

Rhonda Jennings Blackburn
Immediate Past President
Pikeville

Kyle R. Bunnell
Young Lawyers Division Chair
Lexington

Amelia M. Adams
Lexington

Douglas G. Benge
London

Miranda D. Click
Pikeville

Jennifer M. Gatherwright
Crescent Springs

William M. "Mitch" Hall, Jr.
Ashland

Sheila P. Hiestand
Louisville

Sarah Hay Knight
Somerset

LaToi D. Mayo
Lexington

Stephanie McGehee-Shacklette
Bowling Green

Susan D. Phillips
Louisville

Ryan C. Reed
Bowling Green

James A. Sigler
Paducah

Catherine D. Stavros
Fort Mitchell

Matthew C. Tierney
Owensboro

2025-2026 Continuing Legal Education Commission

Jennifer S. Nelson
First Supreme Court District

Colton W. Givens
Second Supreme Court District

Kelly K. Ridings
Third Supreme Court District

Megan P. Keane
Fourth Supreme Court District

Nealy R. Williams
Fifth Supreme Court District

Frank K. Tremper
Sixth Supreme Court District

Robert Stephen McGinnis, Chair
Seventh Supreme Court District

Justice Robert B. Conley
Supreme Court Liaison

Cassie H. Cooper
Director for CLE

Kentucky Bar Association CLE Staff

John D. Meyers
Executive Director

Cassie H. Cooper
Director for CLE

Lori J. Reed
CLE Attorney Editor &
Section/Division Program
Coordinator

Caroline J. Carter
CLE Lead Program
Coordinator – Annual
Convention & Virtual Education

Laura Cole
CLE Program Coordinator –
Kentucky Law Update & New Lawyer Program

Coleen Kilgore
CLE Compliance
Coordinator

Terri Marksbury
CLE Regulatory Coordinator &
Commission Paralegal

Clifford D. Timberlake
CLE Accreditation
Coordinator