KENTUCKY LAW UPDATE 2026

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Kentucky Court of Appeals Update

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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. ADMINISTRATIVE LAW

Professional Learning Institute, LLC v. Commonwealth, 2024-CA-0938-MR, 727 S.W.3d 670 (Ky. App. 2025). Opinion vacating by Moynahan, J.; Thompson, C.J. and Acree, J. (concur).

This appeal presented an issue of first impression regarding whether the Kentucky Board of Home Inspectors ("KBHI") and the Kentucky Real Estate Authority ("KREA") have statutory authority to promulgate and enforce regulations allowing KBHI to authorize investigations, complaints, and disciplinary actions against parties other than licensees. In this appeal, the underlying dispute arose from a series of education courses tendered by Professional Learning Institute ("PLI"), an education provider, to KBHI that the former was alleged to have conducted without KBHI approval. A KBHI investigation resulted in discipline against PLI that was challenged on appeal. Finding that the hearing officer's final order and the Jefferson County Circuit Court improperly extended the scope of KBHI's statutory authority to investigate and discipline education providers, the Court vacated the Jefferson County Circuit Court's order of dismissal, set aside the hearing officer's final order, and dismissed the disciplinary action taken by KBHI and KREA against PLI. The Court affirmatively ruled that the home inspector statutes only authorize investigations, complaints, and disciplinary actions against licensees.

II. APPELLATE PROCEDURE

W. I. S. v. K. M. B, 2024-CA-1125-MR, 2024-CA-1126-MR 722 S.W.3d 569 (Ky. App. 2025). Opinion and order dismissing by Eckerle, J.; A. Jones, J. and Taylor, J. (concur).

These matters involved appeals of a granted stepparent adoption brought by the natural father. The natural father filed his brief, and the Court found the brief to be severely deficient. Instead of dismissing the appeals, the Court struck the brief and allowed for an opportunity to file a compliant brief. Natural father again filed a deficient brief with little changes as to the Court's recommendations. The Court then permitted the opportunity to file a corrective reply, which the natural father failed to do. After repeated failures to file a compliant brief, the Court dismissed the appeals. The briefs submitted failed to cite to the written record at all, as required by RAP 32(A)(3) and (4). There was no preservation statement; this section of the brief was used to discuss issues not listed in the issues section. Third, the appendix did not contain citations to where the items listed would be found in the record. In short, despite the Court's leniency, natural father demonstrated he was unable, or unwilling, to abide by the mandatory briefing rules. The Court's patience is not boundless.

III. CIVIL LAW

A. *eSquared Communications, LLC v. Yates*, 2024-CA-0621-MR, 2025 WL 2678561 (Ky. App. Sept. 19, 2025). Opinion affirming in part, reversing in part, and remanding by Karem, J.; Thompson, C.J. and Taylor, J. (concur).

A telecommunications business was formed when two partners executed a one-page, handwritten document entitled "Ownership Agreement" outlining minimal details governing their LLC. After 12 years of operation, one partner filed suit against the other, alleging, among other claims, breach of fiduciary duty, breach of contract/operating agreement, conversion, and tortious interference. In addition, he requested the equitable remedy of an accounting. The trial court granted summary judgment to the defendants, dismissing all the above claims. The decision was subsequently appealed. The Court affirmed in part, reversed in part, and remanded the case to the trial court for further proceedings. Specifically, it held the trial court was correct in the dismissal of the following claims: tortious interference (the plaintiff did not satisfy a key element of the claim); breach of contract/operating agreement claim (no such document was proven to exist); and conversion (the managing partner had apparent authority to make transactions without partner approval). However, the Court reversed the trial court's order dismissing the claims alleging breach of fiduciary duty and requesting an accounting, finding the dismissals premature. These issues were returned to the trial court for hearings to determine whether a claim for either can be maintained.

B. *Powell v. Powell*, 2024-CA-0886-MR, 2024-CA-1385-MR, 2024-CA-1413-MR, 720 S.W.3d 900 (Ky. App. 2025). Opinion reversing and dismissing in part, and affirming in part by Cetrulo, J.; Karem, J. and Moynahan, J. (concur).

This involved an appeal from summary judgment in favor of an insurer in an action involving out-of-state residents and insurance policies. It was also a case where an untimely appeal required partial dismissal. In this action, the circuit court issued two rulings within five days of each other. The notice of appeal was timely filed as to one of the orders. The amended notice was filed five days after the 30-day deadline. Counsel convinced the circuit court to enlarge the time, arguing he had computer issues on the day the first ruling was entered and then was out of the office at a CLE conference. The Court reversed, relying upon recent Supreme Court precedent holding this was insufficient to constitute excusable neglect so as to provide the Court of Appeals with jurisdiction. The timely filed appeal of the remaining ruling was affirmed. Geico properly denied coverage to an out-of-state resident on a policy issued in Tennessee which contained a household exclusion. While such exclusions are disfavored in Kentucky, our precedent upholds the application of the other states' laws in such instances. This was a claim for coverage under a Tennessee motorcycle policy, and Kentucky had no strong public policy requiring application of Kentucky law.

C. *Schneider v. Buttermilk Shopping Center, LLC*, 2024-CA-1036-MR, 730 S.W.3d 93 (Ky. App. 2025). Opinion reversing in part and remanding by Karem, J.; Cetrulo, J. and McNeill, J. (concur).

A shopping center filed a breach of contract suit against its former tenant, a limited liability company ("LLC") registered in Ohio, and its principal. The trial court granted summary judgment on the issue of liability on the grounds that the principal of the LLC could be held personally liable under KRS 275.095 for failing to organize under Kentucky law as the LLC had not obtained a certificate of authority to do business in Kentucky pursuant to KRS 14A.9-010(1). The Court held that organization and registration are distinct concepts, and a foreign LLC is not required to "organize" under Kentucky law, citing KRS 275.380. The statute differentiates between organization and registration and plainly states that the laws of the state under which a foreign LLC is organized shall continue to govern its organization and internal affairs. The Court stated that KRS 275.095 was intended to impose liability on persons misrepresenting themselves as agents of LLCs that do not exist or as agents of an existing LLC but without its approval. Consequently, the Court reversed the holding that the LLC and its principal are jointly and severally liable to the shopping center. It further held the principal was personally liable for the portion of the debt incurred during the initial term of the lease because he had signed a personal guarantee to that effect. The case was remanded for further proceedings.

D. *Commonwealth ex rel. Attorney General Russell Coleman v. Perry County Fiscal Court*, 2024-CA-0629-MR, 2025 WL 2809422 (Ky. App. Oct. 3, 2025). Opinion reversing and remanding by Easton, J.; A. Jones, J. and Lambert,, J. (concur).

The City of Hazard had standing to challenge its exclusion under KRS 91A.400, the statute permitting certain cities to enact a restaurant tax. The Court found the statute constitutional. Also, because of constitutional separation of powers, the courts may not give a city authority to enact a tax. The changing of a city's classification is a power held solely by the General Assembly. No court has the authority to repair even obvious classification errors; that must be done by the General Assembly. Because equitable relief, specifically affirmative injunctive relief, had been granted by the circuit court, the Court also held that the doctrine of laches applied. The City of Hazard had taken no action for decades to correct its classification and further waited eight years to bring suit following the questioned amendment of KRS 91A.400. This delay was unreasonable, and the City of Hazard was not entitled to equitable relief. The circuit court's order granting summary judgment was reversed and remanded with an instruction to dismiss the case.

E. *Jelloh v. Spivey*, 722 S.W.3d 812 (Ky. App. 2025). Opinion reversing and remanding by Combs, J.; Caldwell, J. Easton, J. (concur).

A settlement was reached between the parties involved in a motor vehicle accident in which Jelloh, the appellant, agreed to accept the sum of $7,500 in exchange for executing a release. However, before executing the agreement, Jelloh, a native of West Africa, disappeared, presumably having returned to Africa. The trial court ordered him to comply, but he never appeared nor was the settlement executed.

Opposing counsel filed a motion for contempt and for an award of attorney's fees. The trial court, *sua sponte* without a motion for involuntary dismissal before it, dismissed the case for failure to appear and to comply with its order. Jelloh's counsel filed this appeal seeking enforcement of the settlement agreement (and thereby his attorney's fee), arguing that Jelloh's personal execution of the release of his claims was not necessary to implement the agreement. The Court agreed and reversed the order of dismissal. It remanded with directions for the court to utilize the remedy available by virtue of CR 70, which gives it the power to appoint "some other person" to execute the release in lieu of resorting to the extreme remedy of involuntary dismissal.

F. *Minton v. Paducah & Louisville Railway, Inc.*, 2023-CA-1146-MR, 2023-CA-1148-MR, 2025 WL 2882039 (Ky. App. Oct. 10, 2025). Opinion affirming by L. Jones, J.; Combs, J. and Eckerle, J. (concur).

The Court concluded it is generally improper for a trial court to take judicial notice of the absence of a Kentucky statute or regulation requiring a railroad to remove vegetation near a crossing, but the error was unpreserved because the objection to the taking of judicial notice was not made until the following day. The taking of judicial notice was not a palpable error because the notice was not mentioned again during the trial or contained in the jury instructions. The Court held that the prohibition on the giving of ultimate issue testimony by an expert set forth in *Kennedy v. Hageman*, 704 S.W.2d 656, 659 (Ky. App. 1985), was overruled by *Stringer v. Commonwealth*, 956 S.W.2d 883, 891 (Ky. 1997). Finally, the Court held that only the physical characteristics of a railroad crossing – not the actions or inactions of a driver – may be considered to determine whether the crossing is extra-hazardous.

G. *Stovall v. KY 120 United AFT*, 2024-CA-0627-MR, 2024-CA-0648-MR, 2025 WL 2942203 (Ky. App. Oct. 17, 2025). Opinion affirming by Easton, J.; A. Jones, J. and Karem, J. (concur).

These two appeals were from orders granting a motion to dismiss and denying attorney's fees. The complaint was filed by parents of children in Jefferson County Schools. They sought damages from the Appellees for advocating a teacher "sickout" to protest proposed changes to the teachers' retirement system. The Court affirmed the granting of the Appellees' motion to dismiss and the denial of Appellees' motion for attorney's fees, although for reasons different than those relied upon by the circuit court. First, a five-year limitation period applies under KRS 413.120(2). The circuit court had ruled the Appellees' claim for damages was time-barred under the one-year limitation period for personal injuries. However, the one-year limitation period applies to physical harm, which was not the nature of the injury here. Thus, the claim was not time-barred. Instead of a limitation issue, the Court found a lack of standing and causation. The statute relied upon regulated interaction between employers and employees and was not designed to create a cause of action for the parents of students. Further, the Appellants cannot establish that the two Appellees were the cause of the work stoppage such that the work stoppage was fairly traceable to them alone; the work stoppage was the result of hundreds of individual decisions. There is no practical way to redress the claim made by assessing responsibility among all those who participated, even if Appellants led the way. The complaint was still properly dismissed. In the context of awarding attorney's fees, the Court then addressed the circuit court's ruling that the social posts advocating the sickout were protected speech under the Uniform Public Expression Protection Act (UPEPA). KRS 454.462(1). UPEPA's purpose is to prevent SLAPP lawsuits that are aimed to harass, intimidate, or silence. While Brewer had a right to criticize the legislation, the posts called for an illegal public employee work stoppage. While the complaint was properly dismissed, Appellants were not proven wrong in their argument that the call for an illegal act which immediately followed was not protected by the First Amendment and could support a claim for damages in some circumstances. The circuit court did not abuse its discretion in not awarding attorney's fees.

H. *Lhotsky v. Sutcliffe*, 2024-CA-1521-MR, 723 S.W.3d 842 (Ky. App. 2025). Opinion affirming by Cetrulo, J.; L. Jones, J. and Lambert, J. (concur).

This involved an appeal from summary judgment in a car accident case where the court addressed principles of negligence *per se* and proximate cause. The Court of Appeals affirmed the circuit court's judgment in favor of a homeowner whose brick/stone mailbox was struck by a driver resulting in the driver's death and serious injuries to the passenger. The passenger argued the mailbox was an encroachment under KRS 177.106 and violated KRS 179.240 as it was located within the right-of-way. The Court analyzed precedent and found neither of these statutes applied to create a negligence *per se* claim for a jury. The mailbox was not an obstruction or in the right-of-way as it was 11 feet off the roadway, it was not clear who placed it there, and there was no evidence of it being struck in the decades prior to this accident. With regard to the common law negligence claims, the Court found the lack of foreseeability of a danger here was significant in determining whether the property owner had any duty to the vehicle passenger. Moreover, the Court agreed with the circuit court that there was no proximate cause established. The mailbox, like a tree, was harmless until acted upon by the conduct of the driver in his operation of the vehicle.

I. *Crowder v. Yussman*, 2024-CA-0930-MR, 724 S.W.3d 772 (Ky. App. 2025). Opinion affirming by Eckerle, J.; Caldwell, J. and Cetrulo, J. (concur).

Appellant filed suit against her former fertility doctor alleging he used his own sperm to inseminate her artificially, without consent, in 1975. Following Appellant's discovery that Appellee was the biological father of her child, she filed suit against him asserting both statutory and common-law causes of action. The Jefferson Circuit Court granted Appellee summary judgment on all claims. In affirming the trial court's judgment, the Court of Appeals found that Kentucky's Fertility Fraud Act, KRS 311.373, did not apply retrospectively to Appellant's fertility fraud claim. The Court further held that Appellant's common-law causes of action were time-barred pursuant to the applicable statutes of limitation and statute of repose. The Court also sanctioned Appellant's counsel for submitting three citations to fictitious authority and a false preservation statement in her appellate brief to the Court in violation of the Kentucky Rules of Appellate Procedure.

J. *Todd v. Wesley*, 2025-CA-0278-MR, 725 S.W.3d 545 (Ky. App. 2025). Opinion affirming by Cetrulo, J.; Thompson, C.J. and Moynahan, J. (concur).

This appeal followed a jury verdict in favor of homeowners against their builder. The builder of the home initiated the lawsuit after the homeowners refused to pay the final invoice, citing numerous failures and problems with the construction. In response to the builder's filing, they filed a counterclaim for damages for the defective construction. They supported their claim with evidence that the total damages were approximately $250,000, the full value of the home. The jury agreed with the homeowners, awarded them full damages sought, and denied any recovery on the unpaid invoice to the builder. On appeal, the builder argued he was entitled to a directed verdict and that the instructions to the jury were misleading. The Court affirmed the judgment, finding ample evidence to submit the issue of failure to pay the invoice to the jury. Similarly, the court held the jury instructions were substantially correct and did not mislead the jury on the doctrine of substantial performance.

K. *Andes Roofing, LLC v. Rusnak*, 2024-CA-1092-MR, 726 S.W.3d 13 (Ky. App. 2025). Opinion affirming in part, reversing in part, and remanding by Taylor, J.; Combs, J. and L. Jones, J. (concur).

Andes Roofing appealed from the order granting dismissal of their defamation claim against Rusnak. The circuit court determined that the Uniform Public Expression Protection Act ("UPEPA") applied to Rusnak's statements because they were matters of public concern. The circuit court then dismissed the defamation claim because it ruled the statements were not actionable. The Court affirmed the circuit court ruling that the statements made were a matter of public concern; thus, the UPEPA applied. In *Davenport Extreme Pools & Spas, Inc. v. Mulflur*, 698 S.W.3d 140, 155 (Ky. App. 2024), this Court concluded that the UPEPA was intended by the General Assembly to apply widely to expressions both public and private, especially speech relating to consumer opinions. In fact, the Court quoted KRS 454.462(2)(b)(2) to state that UPEPA expressly covers actions involving business reviews. *Id*. As in *Davenport Extreme Pools*, Rusnak's statements concerned Andes Roofing's quality of work, business acumen, and trustworthiness. The Court concluded that Rusnak's statements regarding Andes Roofing were a matter of public concern under KRS 454.462(1)(c). However, the Court reversed and remanded the circuit court ruling that all the statements were not actionable. The statements by Rusnak that Andes Roofing was a terrible company to do business with, used unskilled workers, did terrible work, and encouraging others to not use the company constitute Rusnak's subjective opinions concerning Andes Roofing. These statements are based upon Rusnak's own perception, are inherently subjective, and are incapable of being proven true or false. The statements are absolutely privileged as pure opinion and dismissal was proper. However, the Court found one comment more troublesome: "'[T]hey delete all negative reviews!!! They do leave a few to look normal . . . Ethan Andes is a Con Man!!!!'" The Court determined that calling someone a con man is an opinion and is protected. However, Andes deleting negative reviews is a fact that is capable of being proven true or false. Such a statement is neither subjective nor expresses an opinion and is certainly defamatory. This case was remanded for the circuit court to determine the truth or falsity of this statement following discovery.

L. *Peterson v. Peterson*, 2024-CA-0560-MR, 2025 WL 3492239 (Ky. App. Dec. 5, 2025). Opinion reversing and remanding by Eckerle, J.; Caldwell, J. (concurs) and McNeill, J. (dissents and files separate opinion).

This appeal arose from a dispute over ownership of a family's half-century old family farm. To prevent the sale, division, or encumbrance of the property, the parents had nominally deeded it to their five children, who remained subject to transferring bare title back to them at any time. Upon the father's death, the widow directed that the property pass to one brother who had always lived on the farm and cared for it in exchange for his provision of $50,000 to each of his four siblings. The Appellee refused and sought sale of the farm against and in disregard of the express wishes of both of his parents, his own promises and understanding, the history of the workings of the property, and the agreements, desires, and actions of all four of his siblings. The trial court ruled in his favor, denying the sought-after constructive trust over the entire farm. The Court of Appeals found that Kentucky law provides for a constructive trust under these circumstances to effectuate the will of the grantor and nominal owners and of all the other family members that the property should not be sold or divided. The Court held the circuit court abused its discretion in referring the matter to a master commissioner for the sale and division of the family farm. The Court reversed and remanded the matter back to the circuit court for imposition of a constructive trust in favor of the Appellants. The dissent would have affirmed the sale.

M. *Bradshaw v. Capital Community Economic/Industrial Development Authority*, 2024-CA-1259-MR, 727 S.W.3d (Ky. App. 2025). Opinion affirming by A. Jones, J.; Easton, J. and Lambert, J. (concur).

Terri Bradshaw appealed the Franklin Circuit Court's summary dismissal of claims asserted against her former employer, Kentucky Capital Development Corporation ("KCDC") for breach of contract and violations of the Open Meetings Act and the Whistleblower Act. As to Bradshaw's breach of contract claim for failing to hire an executive assistant and for offering an insufficient amount to compensate for vacation and comp time, the Court held that Bradshaw did not plead that she satisfied any conditions precedent in her contract with KCDC. Additionally, she was capped at 50 hours per fiscal year of comp time and being able to carry over 277.5 hours of annual leave per year so she could never have warranted a judgment in her favor. As to Bradshaw's argument that there was a violation of the Open Meetings Law and the Open Meetings Act, the circuit court appropriately dismissed the claim as a matter of law. Violations of the OMA do not render official actions void *ab initio* (meaning it would not have rendered the non-renewal of her contract void). Rendering a judgment voidable is but one remedy. Additionally, there was no error in holding a straw vote in a closed meeting but reaching the final action in open session. Also, even if the Board's description of the need for a closed-door meeting was inadequate, Bradshaw did not explain how it amounted to willful misconduct. For Bradshaw's whistleblower claim, the circuit court determined, and the Court agreed, that Bradshaw was not an employee and KCDC was not an employer within the meaning of KRS 61.101. KCDC is not entitled to pure sovereign immunity, as it is not a state or county government, and it does not perform an integral function of government. As the Kentucky Supreme Court has determined, local industrial development authorities created under KRS 154.50-301 *et seq.* are not entitled to governmental immunity. *Kea-Ham Contracting, Inc. v. Floyd County Development Authority*, 37 S.W.3d 703 (Ky. 2000). The Court affirmed.

N. *Gleason v. Magna Wave, Inc.*, 2024-CA-1300-MR, 727 S.W.3d (Ky. App. 2025). Opinion reversing and remanding by Karem, J.; Combs, J. and A. Jones, J. (concur).

Employee filed a complaint against his employer for wrongful termination. The trial court granted the employer's motion to dismiss, finding that Kentucky is an at-will employment state, and the firing of the employee did not violate public policy. The employee's job required him to make calls to customers throughout the country. These calls were recorded without the knowledge or consent of the customer. Kentucky law allows the recording of conversations with the consent of only one party. However, the employee alleged other states to which he was calling required the consent of both parties for the recording to be legal. He refused to make the phone calls without obtaining that consent, and employer fired him. The Court reversed the trial court. The Court found that it is a violation of public policy to fire someone for refusing to break the law, even if it is another state's law.

O. *Grimsley v. Burnett*, 2023-CA-1149-MR, 2025 WL 3683138 (Ky. App. Dec. 19, 2025). Opinion affirming by Acree, J.; Easton, J. and McNeill, J. (concur).

Brayden Grimsley alleged Kentucky State Police officer Rickey Elmore subjected him to excessive force during a traffic stop. After KSP investigations began, Elmore resigned from KSP. Grimsley brought a 42 U.S.C. §1983 action against Elmore, who essentially confessed judgment and settled for $100,000. However, because Elmore could only pay $10,000, Grimsley received only that much cash. The settlement agreement, however, memorialized Elmore's obligation to pay an additional $90,000. To make up the difference, Elmore assigned by quitclaim a "right" Grimsley believed Elmore had pursuant to KRS 16.185 to indemnification by the Commonwealth for his conduct while still with KSP. Grimsley demanded the KSP Commissioner acknowledge such statutory "right" exists to indemnify Elmore and now Grimsley by assignment. The Commissioner refused. Grimsley sued to claim that assigned "right." The circuit court dismissed for failure to state a claim. The Court of Appeals affirmed. KRS 16.185 does not establish a right of indemnification; it is an appropriations statute by which the legislature conferred upon an executive branch officer (the KSP Commissioner) the delegable power to determine whether a state trooper conferred a benefit upon the Commonwealth by acting "within the scope and course of employment . . . during the performance of duty and . . . in the good faith belief that the act or omission was lawful and proper." The Court concluded Grimsley appealed the Commissioner's administrative decision as a constitutional right, *citing Louisville Historical League, Inc. v. Louisville/Jefferson Cnty. Metro Government*, 709 S.W.3d 213 (Ky. 2025). The Court rejected Grimsley's as-applied challenge to the statute under the Kentucky Constitution, unmoved by his argument that the Commissioner's disinclination to find Elmore acted in good faith represented an arbitrary wield of power.

P. *O'Connell v. Thieneman*, 2024-CA-0300-MR, 2025 WL 3683236 (Ky. App. Dec. 19, 2025). Opinion reversing by McNeill, J.; Caldwell, J. and Taylor, J. (concur).

The Kentucky Court of Appeals addressed a defamation claim arising from a speech given by Michael O'Connell, the Jefferson County Attorney, during a Law Day event in 2018. O'Connell referred to Thieneman as a "sexual predator" and a "domestic violence perpetrator," which resulted in Thieneman filing a defamation suit. O'Connell sought dismissal based on immunity. The Jefferson Circuit Court denied his motion, which was affirmed by the Court of Appeals. On remand, O'Connell filed a motion for summary judgment, which was denied. The Court of Appeals reversed the circuit court's decision, concluding that O'Connell's remarks, although inaccurate, were not made with malice or bad faith because the Court was presented with nothing that would necessitate a jury to determine whether O'Connell acted in bad faith, thus entitling him to qualified immunity. The Court found that O'Connell corrected his mischaracterization during his speech, and there was no triable fact regarding malice. Consequently, the order of the Jefferson Circuit Court was reversed.

Q. *Estate of Lee by and through Maggard v. Cross*, 2024-CA-1452-MR, 2024-CA-1470-MR, 2026 WL 16375 (Ky. App. Jan. 2, 2026). Opinion affirming by Easton, J.; Caldwell, J. and Combs, J. (concur).

This case addressed the legal theories for liability of a parent, guardian, or custodian for the negligent operation of a vehicle by a minor. T.C. Genoa Somersall ("Genoa") was operating a vehicle she bought and insured when a one-vehicle accident occurred. At the time of the accident, Genoa was a minor but is now an adult. Three minor passengers were in the vehicle. Two were killed and the other sustained serious injuries. Appellants filed suit against several defendants, including Appellee Jeffrey Cross (Cross), Genoa's legal custodian. The circuit court entered summary judgment in favor of Cross on all claims against him. Appellants asserted claims under the family purpose doctrine, negligent entrustment, and KRS 186.590. They insisted that issues of fact regarding Cross's "control" of the vehicle prevented summary judgment. The Court affirmed the order granting summary judgment on these claims because Cross did not own, maintain, furnish, or control Genoa's vehicle. Genoa purchased the vehicle with her own funds, the title was solely in her name, and Cross had no ownership interest in the vehicle. Cross did not "entrust" the vehicle to Genoa as it was hers. Cross exercised no control over the vehicle. Cross never exercised any restriction on the use of Genoa's vehicle, testifying that "it was her car." The trip undertaken by Genoa when the accident occurred was not a trip for any family purpose. Statutory liability for Cross was removed under KRS 186.590(2) because Genoa maintained her own insurance policy, and there is no liability under KRS 186.590(3) because Cross did not give or furnish the vehicle to Genoa. The final avenue of liability argued was the general negligence theory of negligent supervision. This requires that the injury be foreseeable. Appellants argued the accident was foreseeable because Cross did not trust Genoa to drive after she had previously wrecked his car. However, Cross's uncontested testimony showed that the prior wreck was a result of a blown tire, not any reckless driving by Genoa. Also, as a result of that prior accident, Cross did not trust Genoa's friends because they lied about having a driver's license. For these reasons, Cross wanted to be present when Genoa drove his car. He had no issue with Genoa later driving her own vehicle after she obtained a driver's license. Because Cross did not know about them, Genoa's prior acts of sneaking out of town with friends were insufficient to put Cross on notice that she was a foreseeable risk to others because of her incompetent driving. The evidence simply failed to show Cross was on notice, or should have been on notice, that Genoa was a dangerous driver. No evidence of prior inept driving by Genoa was presented. Cross had no notice that Genoa and her passengers planned to skip school and drive to Michigan on the day of the fatal accident. Cross was not required to monitor Genoa 24 hours a day.

R. *Padgett v. Meade County*, 2025-CA-0383-MR, 733 S.W.3d 397 (Ky. App. 2026). Opinion affirming by Thompson, C.J.; Combs, J. and Eckerle, J. (concur).

The Court of Appeals affirmed the trial court's order which held that an RV park located across the street from a farm is not used for agricultural purposes and is therefore not exempt from zoning regulations imposed by Appellee. KRS 100.203(4) limits city and county zoning provisions related to land used for agricultural purposes. KRS 100.111(2) defines "agricultural use" as "the production of agricultural or horticultural crops." Appellants believed that agritourism should be included in the definition of "agricultural use," and since the RV park provided accommodations for tourists visiting the farm for agritourism purposes, the park should be exempt from zoning regulations. The Court held that the RV park is not used for agricultural purposes. KRS 100.111(2) is clear and unambiguous, and agritourism does not fit the definition of "agricultural use."

S. *Gatchel v. Opell*, 2024-CA-0882-MR, 2026 WL 70656 (Ky. App. Jan. 9, 2026). Opinion affirming by A. Jones, J.; Thompson, C.J. and Acree, J. (concur).

In an appeal from a bench trial, the Court of Appeals affirmed the trial court's entry of a judgment in favor of the appellees dismissing the appellant's claims with prejudice. The appellant and his friend purchased rural lakeside property from the appellees in Cadiz, Kentucky. The appellant's friend lived on the property for over a year and a half before appellant bought her one-half share and became the full owner. When appellant began his own occupation of the property, however, he encountered detrimental living conditions involving, *inter alia*, soil erosion, drainage and the wet cell septic system. The appellant eventually believed these conditions had not been properly disclosed by the appellees in their seller's disclosure at the time of the purchase. The appellant filed suit against the appellees alleging fraud, misrepresentation, and failure to disclose material defects. After more than a decade of extensive pretrial litigation, the trial court conducted a bench trial and found that appellant had failed to prove any claim of fraudulent misrepresentation or fraudulent omission by clear and convincing evidence. In his appeal, appellant argued the trial court applied the wrong legal standard in evaluating his nondisclosure claims, contending that it should have looked beyond the sellers' subjective beliefs in their seller's disclosure. The Court of Appeals considered and rejected the appellant's arguments. To prevail on a claim of fraudulent misrepresentation, a plaintiff must prove by clear and convincing evidence a material representation that is false, known to be false, or made recklessly. The trial court applied the correct legal principles when it examined what the appellees knew about the conditions of their property, whether they regarded any condition as a defect, and whether the evidence demonstrated intentional concealment or omission. Under this legal framework, the evidence adduced at the bench trial supported the trial court's ultimate findings in favor of the appellees. Finally, the Court of Appeals held the trial court properly denied appellant's motion to amend his complaint to assert a statutory claim under KRS 446.070. The proposed claim did not relate back under CR 15.03 and was therefore barred by the statute of limitations.

T. *Louisville Metro Government v. Clint Chemical and Janitorial Supplies, Inc.*, 2024-CA-0556-MR, 2026 WL 119216 (Ky. App. Jan. 16, 2026). Opinion vacating and remanding by Acree, J.; Karem, J. and Lambert, J. (concur).

Clint Chemical and Janitorial Supplies (Clint) entered into a contract with the Louisville Metro Government (Metro) for janitorial supplies. When Metro purchased supplies from another vendor, Clint filed suit in Jefferson Circuit Court alleging Metro breached the implied covenant of good faith, among other claims asserted pursuant to the Kentucky Model Procurement Code (KMPC), codified in KRS Chapter 45A. Metro characterized the breach of the implied covenant of good faith claim as a tort claim from which it enjoys governmental immunity. Clint asserted the claim was an action "on the contract" under KRS 45A.245(1) for which governmental immunity is waived. The trial court allowed the claim to move forward, and Metro appealed. On appeal, the Court explained the "Catch-22" inherent in Clint's position, given that KRS 45A.245(1) requires actions "on a contract" to be "brought in the Franklin Circuit Court". If Clint was wrong in characterizing its action as an action "on a contract," then Metro was immune, but if Clint was correct in characterizing its action as an action "on a contract," then Clint filed its action in the wrong court. The Court explained that KRS 45A.245(1) does not speak to venue; it vests the Franklin Circuit Court with exclusive subject matter jurisdiction over disputes governed by the KMPC. The Court vacated the ruling of the Jefferson Circuit Court and remanded with instructions to dismiss Clint's complaint.

U. *Carroll Properties LLC v. Hammons*, 2024-CA-1328-MR, 729 S.W.3d 579 (Ky. App. 2026). Opinion affirming by Caldwell, J.; McNeill, J. and Taylor, J. (concur).

This appeal arose from the circuit court's grant of summary judgment in an action filed by subdivision lot owners seeking a declaration of rights and to void the title of a parcel of land dedicated as a right-of-way on the subdivision plat. This particular subdivision plat included a 50-foot-wide lot, designated as a right-of-way on the plat, that also fronted the shoreline of a lake. The remaining owner from the original land dedicating the subdivision sold the right-of-way lot. The lot owners adjacent to the right-of-way, hearing rumors that the purchaser of the right-of-way planned to obstruct other lot owners from accessing the lake, filed the original declaration of rights action. They then amended the action to include a claim seeking to void the title to the right-of way lot. The Court affirmed the circuit court's ruling based on the holdings in *Cassell v. Reeves*, 265 S.W.2d 801 (Ky. 1954), and *Herron v. Boggs*, 582 S.W.2d 643 (Ky. 1979). The sweeping language in those two cases unmistakably indicates that land on a plat which was set aside as being dedicated for the usage of the public or other subdivision owners loses its character as the private property of the developer once the plat is dedicated, recorded, and lots depicted on it are sold to others. However, these cases did not address whether the title transferred was void or could be voided. The Court also affirmed the circuit court ruling that "[w]here, as here, the grantor has nothing to convey, a mutual intent to convey and receive title to the property is beside the point. The purported conveyance is a nullity, notwithstanding the parties' intent." *Bongaards v. Millen*, 793 N.E.2d 335, 339 (Mass. 2003).

V. *Cabinet for Health and Family Services v. Faces of Change, LLC*, 2025-CA-0144-MR, 2026 WL 118984 (Ky. App. Jan. 16, 2026). Opinion reversing and remanding by Thompson, C.J.; Eckerle, J. (concurs) and Combs, J. (dissents and files separate opinion).

The Court of Appeals reversed and remanded an order which held the Cabinet failed to follow certain regulatory rules and improperly withheld Medicaid payments from Faces of Change, LLC. Faces of Change brought its petition before the circuit court before it exhausted its administrative remedies. The trial court held that it would be futile for Faces of Change to have to exhaust the administrative remedies before filing its petition. Faces of Change's funding came solely from payments made by Medicaid; therefore, Faces of Change would likely be forced to close due to lack of funds before the administrative action was complete. The Court of Appeals reversed, finding that Faces of Change would need to exhaust the administrative remedies first even at the risk of closing down. The administrative process was not futile because the Cabinet was acting within its jurisdiction and potential remedies were available to Faces of Change. The Court held that the administrative process was not futile so as to excuse failing to exhaust administrative remedies. Judge Combs dissented and would have affirmed the trial court.

W. *Schwing v. Knott County Fiscal Court*, 2025-CA-0331-MR, 2026 WL 16338 (Ky. App. Jan. 23, 2026). Opinion affirming by Combs, J.; Thompson, C. J. and Eckerle, J. (concur).

Appellant is the owner of property containing a roadway with respect to which Knott County had obtained an easement from previous property owners. Appellant now challenges the county's extension of the length of the roadway "to match the length of the recorded deed." Appellant contended that the county had abandoned the portion sought to be extended and that the county's action would constitute an act of inverse condemnation for which he sought compensation. The Court affirmed the circuit court's holding that the easement had never been abandoned simply due to infrequency of use and that the original deed granting the easement had created an express easement. Therefore, the terms of the deed of conveyance properly determined the rights and liabilities of the parties, duly authorizing an alteration in the status quo to reflect the terms of the recorded deed.

X. *First State Bank of the Southeast, Inc. v. Jagannathan*, 2025-CA-0550-MR, 731 S.W.3d 1 (Ky. App. 2026). Opinion affirming in part and reversing and remanding in part by Eckerle, J.; Thompson, C. J. and Combs, J. (concur).

This action began as a foreclosure case, in which appellant First State Bank ("FSB") filed a suit in foreclosure to collect on a defaulted promissory note for a residential construction home loan secured by real property that it had made to Maynard Builders, Inc. ("Maynard"). FSB had properly perfected its security interest by recording its mortgage with the county clerk. However, prior to the mortgage, the intended homeowners and purchasers (Jagannathan) had given Maynard what was termed a "cash advance" pursuant to a written contract which FSB received and of which it had undisputed actual knowledge prior to its loan. Although this contracted money transfer was not recorded, the circuit court deemed it to be an equitable lien and gave it priority over the recorded mortgage because FSB knew about it before lending money. The Court of Appeals affirmed in large part, holding that Jagannathan correctly received priority with respect to $91,297 of the $105,872 in remaining sales proceeds. The Court explained that Kentucky is a race-notice jurisdiction, meaning that the first party to record its interest is generally granted lien priority unless it knows or reasonably should have known of a prior competing claim. Where, as here, FSB had undisputed and actual knowledge of the earlier claim, even though unrecorded and arising in equity, FSB's loan took second priority to it. This actual or inquiry notice stemmed from FSB's prior notice of payments that Jagannathan had already made to Maynard that helped enable Maynard to purchase the lot and construct the residence on the property. FSB had already been furnished and had in its possession a copy of the building contract, which unambiguously indicated that Jagannathan had extended Maynard significant monies toward the purchase of the lot and the construction of the residence. The law does not allow FSB to ignore its knowledge in an attempt to take precedence over the earlier obligation. Had FSB not known or had reason to know of the prior cash advance, or had the earlier money been in the form of unliquidated earnest money in escrow, the ruling might have been otherwise. Significantly here, the parties had altered the contract, crossing out the form language of "earnest money" and substituting "cash advance." The contract amendment evidenced the parties' intention to mean money paid by Jagannathan toward the purchase of the real property at issue. At the very least, this contracted, earlier payment constituted inquiry notice to FSB that Maynard would use the funds to improve the property under conditions imposing upon Maynard a responsibility akin to that of a constructive trustee for Jagannathan's benefit. Reversing in part, the Court found that a small portion of the remaining sales proceeds stemmed from a subsequent advance that occurred after the recorded mortgage. Applying the same race-notice principles, these later change-order monies were not entitled to priority as FSB could not have had notice of them prior to recording its mortgage.

Y. *Skinner v. Louisville/Jefferson County Metro Government*, 2024-CA-0457-MR, 2026 WL 478154 (Ky. App. Feb. 2, 2026). Opinion affirming by A. Jones, J.; Combs, J. and Karem, J. (concur).

In an appeal from the trial court's order granting summary judgment to the appellees, the Court of Appeals affirmed. The appellant alleged that he was terminated from his employment in violation of the Kentucky Whistleblower Act (KWA), KRS 61.*101 et seq.*, for reporting that Louisville Metro's Fleet & Facilities Department ("FFD") failed to obtain electrical permits and inspections required by law for certain electrical work performed in-house. However, FFD had consulted with the Jefferson County Attorney, which advised that KRS 227.480(2) meant FFD was exempt from the permitting and inspection requirements for some electrical work performed by Louisville Metro employees on government-owned buildings. FFD thereafter continued its existing practices in reliance on that advice. The appellant, a recently hired FFD employee, had nonetheless raised concerns about the practice to his supervisors. The appellant was terminated from employment before the expiration of his probationary period, ostensibly for failure to properly supervise his subordinates. In affirming, the Court of Appeals held that appellant's communications regarding FFD's electrical permitting practices did not constitute protected disclosures under the KWA. The reporting of information "which is public information or otherwise already widely known within the organization cannot qualify as a whistleblower disclosure." *Harper v. Univ. of Louisville*, 559 S.W.3d 796, 802 (Ky. 2018). The record established that FFD's practice of performing in-house electrical work without obtaining permits was widely known within the organization well before appellant's employment. Furthermore, the appellant's communications with the chief electrical inspector with Louisville Metro's Department of Codes and Regulations were similarly not qualified disclosures. An employee's request for an opinion or verification regarding the legality of conduct, even if motivated by a sincere belief that the conduct is improper, does not constitute a protected disclosure under the KWA. For these reasons, the Court of Appeals upheld the trial court's order granting summary judgment to the appellees.

Z. *Krallman v. Krallman*, 2024-CA-1515-MR, 731 S.W.3d 478 (Ky. App. 2026). Opinion affirming and remanding by Karem, J.; Easton, J. and McNeill, J. (concur).

A family business involving masonry contracting was incorporated in Ohio in 1982 by Father, the company's president and sole shareholder. Eventually Father's five sons were also employed at the company. In 2012, Father transferred an identical amount of Class A common stock to each of his sons resulting in the sons owning all the company's Class A stock. Additionally, Father and sons entered into a buy-sell agreement which was intended to keep the stock in the family. The agreement contained an arbitration provision. Upon the death of one of the sons, a disagreement regarding the value of the stock ensued between the remaining sibling shareholders and the deceased son's trust and his children. The sibling shareholders filed suit to compel arbitration. The trial court denied the motion to compel on the grounds that the Kentucky Uniform Arbitration Act (KUAA) confers subject matter jurisdiction only when the arbitration agreement specifically provides for arbitration within Kentucky, which the buy-sell agreement did not. The decision was subsequently appealed. The Court affirmed in part but remanded the case to the trial court for further proceedings. Specifically, it held the trial court was correct in denying the motion to compel under the KUAA. However, the case was remanded for the court to first decide if the arbitration provision was valid under state law. If valid, then the court must make findings regarding whether the agreements were contracts evidencing transactions involving interstate commerce under the FAA, which would enable the court to enforce the arbitration provision.

AA. *Stone v. Dean Dairy Holdings, LLC*, 2024-CA-0839-MR, 2026 WL 627170 (Ky. App. Mar. 6, 2026). Opinion affirming by McNeill, J.; Eckerle, J. and Moynahan, J. (concur).

Cathy Stone sued her former employer, Dean Milk Company, for discrimination, retaliation, and intentional infliction of emotional distress. After Ms. Stone's death in 2015, her husband, Carl Stone, was substituted as the named plaintiff. The case was remanded from federal court to the Jefferson Circuit Court. In September 2016, defendants successfully sought dismissal for failure to timely revive under KRS 395.278. The Court of Appeals ultimately reversed that dismissal. In August 2022, appellants filed a separate action, alleging violation of the Kentucky Civil Rights Act (KCRA) for retaliation based on a law firm's filing of a CR 11 motion and a letter threatening fees and potential suit during the previous litigation. The circuit court dismissed under CR 12.02(f) as time-barred by KRS 413.245's one-year limitations period for claims arising from "professional services." The Court of Appeals affirmed, holding the alleged retaliation arose from attorneys' professional services. The Court reasoned that KRS 413.245 applies over the five-year statutory period in KRS 413.120(2), thus rendering the 2022 filing untimely and mooting remaining issues.

AB. *Reynolds v. Blair*, 2024-CA-1041-MR, 2026 WL 627347 (Ky. App. Mar. 6, 2026). Opinion reversing and remanding by Taylor, J.; Caldwell, J. and McNeill, J. (concur).

Linda Reynolds, as administratrix of the estate of Sue Buchanan, sued Genesis Healthcare (Genesis), HBR Madisonville, LLC (HBR), Richard E. Blair, D.O., and Tara Henson, M.D., alleging wrongful death resulting from Buchanan's care at Hillside Center Nursing Home and Retirement Center. Genesis and HBR filed for bankruptcy, and the appeal proceeded against Blair and Henson, the treating physicians. In March 2019, Genesis and HBR had moved to compel arbitration pursuant to an agreement Reynolds signed on behalf of Buchanan. The circuit court compelled arbitration for the claims against all parties over objections from Reynolds that the wrongful death claims against the doctors were separate from the agreement. In 2024, the circuit court sent notice that the action would be dismissed for lack of prosecution unless good cause was shown. Reynolds moved to reinstate the action against the doctors arguing that the arbitration agreement did not apply to those claims. Genesis and HBR argued that the ordered arbitration had not occurred because Reynolds refused to name an arbitrator or proceed to arbitration. The circuit court dismissed the action for lack of prosecution and Reynolds appealed.

The Court of Appeals reversed and remanded. The Court found that the doctors were not parties to the arbitration agreement. The agreement was made between Genesis and Reynolds (on behalf of Buchanan), and the doctors were not Genesis employees. Only Genesis and HBC moved to enforce the agreement, and the doctors did not join that motion. In addition, throughout the case the doctors maintained that they were not bound by the arbitration agreement nor required to participate in an arbitration proceeding. The Court also found the arbitration agreement was not enforceable. The agreement contained provisions to handle a party refusing to name an arbitrator or refusing to participate, calling for the complying party to move the court to progress the arbitration. However, Genesis and HBC stood by and did nothing for five years. KRS 417.070 puts the onus on a party to make an application to the court to appoint an arbitrator if the agreed method fails. Genesis and HBC waived the right to seek arbitration. The wrongful death claims against the doctors were remanded for proceedings on the merits.

AC. *723 Vape, Inc. v. Taylor*, 2024-CA-1060-MR, 2026 WL 911726 (Ky. App. Apr. 3, 2026). Opinion affirming by McNeill, J.; Caldwell, J. and Taylor, J. (concur).

The Court of Appeals affirmed the Franklin Circuit Court's dismissal of a constitutional challenge to HB 11, which regulates vapor products by allowing sales only of FDA-authorized products or those with FDA "safe harbor" certification, and by removing prior statutory distinctions between vapor and nicotine products. Appellants argued HB 11 violated Kentucky Constitution Section 51's single-subject and title requirements because the act (titled "AN ACT relating to nicotine products") also referenced "other substances," including unauthorized and non-nicotine products. The Court held the title provided adequate notice and that references to unauthorized products were germane to the bill's subject. The Court also found Appellants' claims under Section 2 and the Fourteenth Amendment to be unconvincing, concluding HB 11 is not arbitrary. Rather, it is rationally related to a legitimate state interest within the General Assembly's police powers over public health and safety. Ultimately, the judgment was affirmed.

AD. *Saner v. Cabinet for Health and Family Services*, 2025-CA-0234-MR, 2026 WL 917686 (Ky. App. Apr. 3, 2026). Opinion affirming by L. Jones, J.; Cetrulo, J. and Combs, J. (concur).

Appellants are childcare providers. During the COVID-19 pandemic, the federal government made funds available to states to distribute to childcare providers. The Cabinet for Health and Family Services was responsible for distributing those funds to providers in Kentucky. The contracts between the Cabinet and Appellants required the providers to submit a data sheet to a third-party by the fifth of each month and conditioned payments to providers upon the providers complying with the contracts. When Appellants submitted a tardy data sheet, the Cabinet declined to provide funds to the providers. Appellants then filed this action against the Cabinet and the third-party for breach of contract, promissory estoppel, and negligence. The circuit court dismissed all claims against both defendants. The Court affirmed the dismissal of the breach of contract claims against the Cabinet on failure to exhaust administrative remedies grounds since Appellants had not presented those claims to the Secretary of the Finance and Administration Cabinet before seeking judicial relief, as required by KRS 45A.230 *et seq*. The Court affirmed the dismissal of the breach of contract claims against the third-party administrator because Appellants had not shown the existence of a contractual relationship between themselves and the third-party. The Court affirmed the dismissal of the promissory estoppel claims against the Cabinet because Appellants had not demonstrated exceptional circumstances allowing the invocation of estoppel claims against a governmental agency. The Court affirmed the dismissal of the promissory estoppel claims against the third-party because the Appellants had not shown the third-party made a promise to them. The Court affirmed the dismissal of negligence claims against the Cabinet on failure to exhaust administrative remedies grounds since Appellants had not presented those claims to the Board of Claims before seeking judicial relief. The Court affirmed the dismissal of negligence claims against the third-party because Appellants had not shown the third-party owed a duty to Appellants.

AE. *Kentucky Downs, LLC v. Arkk Properties, LLC*, 2023-CA-1150-MR, 2024-CA-0875-MR, 2026 WL 546213 (Ky. App. Feb. 27, 2026). Opinion affirming by Thompson, C.J.; Easton, J. and Eckerle, J. (concur).

The Court of Appeals affirmed a circuit court grant of summary judgment which held that HB 594, 2023 Ky. Acts, Ch. 4, was constitutional. HB 594 amended the definitions of "gambling" and "gambling device" in KRS 528.010 to make skill-based amusement games illegal in Kentucky. The Court held that, based on a rational-basis review, HB 594 did not violate due process, equal protection, or freedom of speech.

AF. *CVS Pharmacy, Inc. v. Chaney*, 2024-CA-0798-MR, 2024-CA-0962-MR, 2026 WL 1108778 (Ky. App. Apr. 24, 2026). Opinion reversing and remanding as to appeal NO. 2024-CA-0798-MR and dismissing as to cross-appeal NO. 2024-CA-0962-MR by McNeill, J.; Cetrulo, J. and L. Jones, J. (concur).

Appellee, James Dustin Chaney, a former practicing physician, filed negligence and false light claims against Appellant, CVS, and other pharmacies, asserting that controlled substance prescriptions were misattributed to his Drug Enforcement Administration number in the Kentucky All Schedule Prescription Electronic Reporting System. The complaint alleged that CVS's conduct led to investigations by state and federal authorities, the loss of his ability to practice medicine, and his indictment. Following a jury trial, Chaney was awarded $7,560,000 in damages, which was later reduced to $2,160,000. CVS appealed the judgment, arguing it was entitled to a directed verdict because Chaney had failed to prove the elements of his negligence and false light claims. Specifically, it argued there was no evidence that any misattributions by CVS caused Chaney's harm or that it had "publicized" any misattributed prescriptions. Chaney cross-appealed, contending the circuit court erred in reducing the jury's damage award. The Court of Appeals agreed with CVS and reversed the circuit court's judgment with directions to dismiss Chaney's complaint. It dismissed Chaney's cross-appeal as moot.

AG. *Ivy v. Ontrac, Inc.*, 2024-CA-1275-MR, 2024-CA-1344-MR, 2025-CA-0429-MR, 2026 WL 1109120 (Ky. App. Apr. 24, 2026). Opinion affirming in part, reversing in part, and remanding by Eckerle, J.; Thompson, C. J. and Combs, J. (concur).

This appeal addresses the award and collection of attorneys' fees and discusses the intersection among contract provisions, the American rule against awarding fees, and notions of prevailing party. The contract between a pole-barn builder and a property owner included a single clause giving the builder the right to collect all costs and expenses, including attorneys' fees, if the builder was "required to employ an attorney to enforce the provisions of" the contract. The owner, who did not read the contract or employ an attorney to do so prior to signing, later hired counsel and sued, alleging shortcomings in the builder's performance, defective work, negligence, and delays in completing construction and requesting compensatory and punitive damages. A jury returned a verdict in favor of the owner but only awarded partial damages, which equated to the value of the overhead doors that the builder failed to deliver and install, due allegedly to the owner's non-cooperativeness. Both parties then sought their respective attorneys' fees, each claiming a unilateral right to do so under the contract and discussing notions of the meaning of "prevailing party" and "enforcement" without the initiation of "litigation." The trial court denied the owner's entitlement to attorneys' fees and, pursuant to the contract's fee provision, awarded the builder a reduced amount of its requested attorneys' fees. Subsequently, the builder sought non-wage garnishment of owner's joint checking account to recoup its attorneys' fees. The owner challenged the garnishment by asserting a statutory exemption for his spouse's retirement benefits, which were deposited to the joint account. The trial court denied the challenge, holding that retirement benefits, once paid out to the beneficiary, were not exempt from garnishment. On appeal, the Court of Appeals held that the owner was not entitled to attorneys' fees under principles of equity or the contract's unilateral fee provision, which was neither unconscionable nor contrary to public policy. The Court affirmed the award of fees to the builder but held that the trial court abused its discretion in awarding a lump sum of fees without sufficient evidence on which to base a reasonable award, thereby compelling reversal and remand for reconsideration as to the amount. Finally, the Court affirmed the trial court's holding that the spouse's retirement funds, once commingled in the joint account, lost their status of statutory exemption.

AH. *Whitehead v. MemberSelection Ins. Co.*, 2025-CA-1029-MR, 2026 WL 1109161 (Ky. App. Apr. 24, 2026). Opinion affirming by Cetrulo, J.; Caldwell, J. and Easton, J. (concur).

This appeal followed the dismissal of an action against an out-of-state insurer for lack of personal jurisdiction. Two Michigan residents died in Kentucky following a single car accident. The passenger's estate filed a bad faith claim against their Michigan insurance company pursuant to Kentucky's Unfair Claims Settlement Practices Act, alleging delay in payment. MemberSelection, which is not registered to do business in Kentucky and does not transact any business in Kentucky, moved for dismissal. The trial court found that plaintiff failed to establish the circumstances to permit personal jurisdiction under the long-arm statute or constitutional due process. The Court affirmed. Under the versions of KRS 454.210 in effect at the time, the court properly looked at whether the cause of action arose from activities and conduct of the non-resident defendant that fall within the long-arm statute and have a direct nexus to the injury alleged. Here, the estate failed to meet its burden of proving any minimum contacts with Kentucky such that MemberSelect could reasonably expect to be called into a Kentucky court to defend an action claiming delay of payment to its insureds under its Michigan policy. Providing coverage for accidents nationwide is not enough to confer personal jurisdiction on a party that has taken no steps to purposefully avail itself of that forum.

AI. *Lummus Corporation v. Lighthouse Transportation Services, LLC*, 2024-CA-0107-MR, 2026 WL 1189933 (Ky. App. May 1, 2026). Opinion affirming by Acree, J.; A. Jones, J. and Karem, J. (concur).

System Solutions, a limited liability company (LLC), was found liable for breach of contract, and the trial court imputed System Solutions' liability to its parent company, Lummus Corporation, under a veil-piercing theory. On appeal, Lummus argued Kentucky statutory law barred the application of the veil-piercing doctrine to LLCs. The Court acknowledged Lummus's argument that the Supreme Court cast some doubt as to whether the question had been fully settled by Kentucky case law and proceeded to examine the history and text of KRS 275.150. The Court held KRS 275.150 permits piercing the veil of an LLC, and the trial court's fact-finding supported application of the doctrine, as well as its calculation of damages.

AJ. *Thornton v. Louisville Metro Government*, 2024-CA-1356-MR, 2026 WL 1189820 (Ky. App. May 1, 2026). Opinion reversing and remanding by Eckerle, J.; Combs, J. and Moynahan, J. (concur).

This appeal sought reversal of the Jefferson Circuit Court's grant of summary judgment to Louisville Metro Government ("Louisville Metro") under the Kentucky Open Records Act ("the KORA"). Appellant, Jessica Thornton ("Thornton"), filed suit to enforce provisions of the KORA against her former employer, Louisville Metro, alleging that it had failed to provide certain records responsive to her requests. In response, Louisville Metro requested dismissal of the suit, which the Jefferson Circuit Court properly interpreted as a motion for summary judgment. Although Thornton proffered an affidavit as a former employee confirming her knowledge of specific email attachments not included with the responsive emails, the circuit court granted Louisville Metro's motion without allowing Thornton any further discovery or motion practice to support her claim that the records she sought did exist and had not been provided. Thornton appealed, asserting the existence of the email attachments was an issue of material fact for a jury. The Court of Appeals held the circuit court granted summary judgment prematurely based on the erroneous determination that Thornton had not made a *prima facie* showing that the records she sought did exist. After noting that Louisville Metro had failed to address the missing email attachments either before the circuit court or in its brief on appeal to rebut Thornton's evidence, the Court of Appeals reversed the circuit court's order and remanded for further discovery and motion practice consistent with the opinion.

AK. *Corvin v. Hardin County Board of Education*, 2025-CA-0866-MR, 2026 WL 1190907, (Ky. App. May 1, 2026). Opinion affirming by Thompson, C.J.; Cetrulo, J. and L. Jones, J. (concur).

The Court of Appeals affirmed an order which denied Carl and Charito Corvin's motion to dismiss the Hardin County Board of Education's counterclaims based on the Kentucky Uniform Public Expression Protection Act (KUPEPA). The trial court held that KUPEPA did not apply in this case because the KUPEPA real property exception applied. The trial court also held in the alternative that the Board provided sufficient evidence to defeat the motion outright. The Court of Appeals held the real property exception did not apply because that exception only applies to cases brought to establish ownership or some other possessory interest in real property. While the underlying case stemmed from real property issues, the counterclaims concerned tortious interference with business relations and abuse of process. The Court held that these claims revolved around tortious activity and not real property; therefore, the real property KUPEPA exception did not apply. The Court went on to hold that the motion was still properly denied because a KUPEPA motion is similar to a motion for summary judgment, and the Board provided sufficient evidence to defeat the motion.

AL. *Commonwealth v. Mountain Comprehensive Care Center, Inc.*, 2025-CA-0122-MR, 2025-CR-0166-MR, 2026 WL 1261486 (Ky. App. May 8, 2026). Opinion reversing and remanding by A. Jones, J.; Thompson, C. J. and Caldwell, J. (concur).

This consolidated appeal arose from the circuit court's order declaring portions of 2023 HB 56 unconstitutional and enjoining its enforcement. In the relevant part, HB 56 governs the provision and reimbursement of behavioral health services under Kentucky's Medicaid program, including reimbursement to community mental health centers ("CMHCs") for services provided outside their designated regional service areas. Under the reimbursement scheme prior to HB 56, CMHCs operated as designated safety-net providers with broad obligations within assigned multi-county regions, and they received a preferred reimbursement rate. A separate category of provider, behavioral health services organizations ("BHSOs"), were not subject to the additional duties and oversight faced by CMHCs providing services in their regions and were paid at a generally lower rate than that received by CMHCs. Prior to the passage of HB 56, CMHCs which chose to operate outside their designated counties effectively worked as BHSOs in those outside areas, yet they collected reimbursement rates at the CMHC level. HB 56 changed this reimbursement policy, stating that CMHCs were permitted to provide services outside their regions, but they would receive the BHSO fee schedule when they did so. In short, HB 56 stated that CMHCs would receive a lower reimbursement rate when providing services outside of their assigned regions. The circuit court granted summary judgment to the CMHC Appellee, Mountain Comprehensive Care Center, Inc., ruling that HB 56 was unconstitutional on equal protection and due process grounds because it created an impermissible geographic classification lacking any rational basis. The Court of Appeals reversed, determining the circuit court improperly conducted rational basis review based entirely on the geographic distinction of the providers without also considering that CMHCs operating in their designated regions have heightened obligations over and above those required of BHSOs. Under such circumstances, the General Assembly was entitled to recognize those differences and legislate accordingly. The Court remanded to the circuit court for further proceedings.

In the consolidated appeal, the Appellees challenged the authority of the Attorney General to appeal the lower court's ruling when the Attorney General was not a party of record. The Court of Appeals reasoned the Attorney General occupies a unique constitutional and statutory role charged with representing the interests of the Commonwealth in litigation pursuant KRS 15.020. The Court held the plain text of KRS 15.090 authorizing the Attorney General to "prosecute an appeal . . . in any case . . . whenever, in his judgment, the interest of the Commonwealth demands it[]"

contained no limitation requiring the Attorney General to be a party to the proceedings below. However, the Attorney General is simultaneously constrained by the principles of appellate practice which forbids an appellate court from considering new claims which were not raised previously. Here, however, the Attorney General only raised arguments mirroring those made by the Cabinet below, thus allowing review on the merits.

AM. *Wilson v. 3M Company*, 2023-CA-0574-MR, 2023-CR-0615-MR, 2026 WL 911427 (Ky. App. May 15, 2026). Not reported in S.W.Rptr. Opinion affirming by Cetrulo, J.; Acree, J. and Karem, J. (concur).

This was an appeal from a denial of relief under CR 60.02. The underlying issue addressed the statute of limitations in pneumoconiosis-related personal injury actions claimed to be connected with single-use respirator masks. In an order dismissing Wilson's action, the trial court granted summary judgment for 3M finding the action time-barred. The court found that Wilson had "actual knowledge" of a connection between the disease and the respirators by January 2019, but the one-year statute of limitations had expired when suit was filed in March 2020. Because Wilson did not file a timely appeal from that order, the Court addressed only the denial of CR 60.02 relief. Finding no abuse of discretion, the Court affirmed the Pike Circuit Court.

AN. *Certified Restoration Services, Inc. v. Fitzgerald*, 2024-CA-1534-MR, 2026 WL 1441840 (Ky. App. May 22, 2026). Opinion affirming by Easton, J.; Eckerle, J. and McNeill, J. (concur).

Certified Restoration Services, Inc. (CRS), performed restoration work related to water damage covered under a homeowner's insurance policy issued to Appellees (the Fitzgeralds) by USAA General Indemnity Company (USAA). After a dispute with USAA for the charges it claimed, CRS filed a mechanic's and materialman's lien and later brought this action against the Fitzgeralds for breach of contract, unjust enrichment, and *quantum meruit*. The Laurel Circuit Court granted summary judgment in favor of the Fitzgeralds on CRS's complaint finding a lack of any evidence to show the Fitzgeralds requested CRS to perform non-covered, additional work for which they had not paid. Prior to the jury trial, the circuit court granted another partial summary judgment in favor of the Fitzgeralds ruling that CRS had failed to properly plead and rely on a newly revealed agreement, disclosed two years after the action began, which CRS purported to be another "contract". After trial, the circuit court also awarded attorney's fees and punitive damages on the Fitzgeralds' counterclaim for malicious prosecution, slander of title, and violation of the Kentucky Consumer Protection Act (KCPA). As to the first order granting summary judgment, the circuit court did not err in disposing of CRS's claims as CRS did not present any evidence supporting a breach of contract claim. The initial alleged contract merely assigned the Fitzgeralds' insurance rights to payment to CRS. As to CRS's other claims, the assignment did not provide that the Fitzgeralds would pay any amount USAA refused. Also, the evidence offered showed that CRS was paid in full by USAA. The Court also affirmed the order granting partial summary judgment, which was essentially a motion to reconsider summary judgment. With there being no Kentucky case law directly on point, the Court used established federal guidelines for revisiting a previously granted summary judgment. Reconsideration of a grant of summary judgment should be done only on the grounds of: "(1) an intervening change in the law, (2) new evidence that was not previously available, or (3) correction of a clear error of law or to prevent manifest injustice." *Wootten v. Commonwealth of Virginia*, 168 F.Supp.3d 890, 893 (W. D. Va. 2016). Reconsideration of a previously granted summary judgment is not for situations of a dissatisfied party trying to "craft new [and] improved legal positions" especially by presenting "evidence that could have been addressed or presented previously." *Id*. As to the Fitzgeralds' counterclaims, the evidence presented to the jury adequately supported the finding that CRS engaged in wrongful use of a civil proceeding as it lacked probable cause. The filing of a lien on the Fitzgeralds' property when CRS knew the amount claimed was not actually owed by the Fitzgeralds and its malicious intent to use the lien as leverage satisfies the elements of slander of title. CRS was adequately paid by USAA but still recorded a lien and sued the Fitzgeralds seeking additional payment. CRS also violated the KCPA. As to the attorney's fees, even if it was in error to submit the amount of attorney's fees to a jury, the error was harmless and so must be disregarded. CR 61.01. There is no question that the Fitzgeralds incurred the $8,500 the jury awarded for the expense of dealing with the initial stages of the litigation, and the KCPA separately authorizes consideration of attorney's fees. The circuit court included the initial $8,500 awarded by the jury on the total amount awarded by the court. Considering all the factors for punitive damages, it cannot be said that the remitted amount (the circuit court reduced the amount from $400,000 awarded by the jury to $200,000) violated due process. The Court affirmed all of the circuit court's orders.

AO. *Pelfrey v. Estate of McDowell*, 2025-CA-0498-MR, 2026 WL 1500960 (Ky. App. May 29, 2026). Opinion reversing in part and dismissing in part by Thompson, C.J.; Combs, J. and A. Jones, J. (concur).

The Court of Appeals held that certain officers of the Three Forks Regional Jail were entitled to qualified official immunity in the death of an inmate after being exposed to oleum capsicum (OC) spray. The Court held that the methods an officer uses to supervise and control inmates are discretionary acts; therefore, the use of OC spray to force an inmate to comply with commands was part of that discretionary authority. The Court also held that the use of the OC was done in good faith because the inmate was not complying with officers' commands, and the OC use was terminated once the inmate complied. Finally, the Court held that the use of the OC spray was within the officers' scope of the authority. The Court believed these officers were entitled to qualified official immunity. The Court also held that the administrator of the jail was entitled to qualified official immunity because his training of the jail staff and creation of jail procedures were discretionary acts, done in good faith, and within the scope of his authority.

AP. *Clover Creek Solar Project, LLC v. Breckinridge County Fiscal Court*, 2025-CA-0983-MR, 2026 WL 1501061 (Ky. App. May 29, 2026). Opinion reversing and remanding by Cetrulo, J.; Caldwell, J. (concurs) and Easton, J. (concurs and files separate opinion).

This was an appeal from a Breckinridge Circuit Court judgment enforcing an "ordinance" of the fiscal court that addressed operation, location, and construction of proposed solar energy systems in the area. Clover Creek and several landowners appealed, arguing the fiscal court lacked authority to adopt ordinances which conflicted with the state regulatory scheme for such facilities. On appeal, the Court reversed the circuit court decision, specifically finding that the two ordinances enacted here were invalid planning and zoning regulations. They regulated land use, did not comply with the provisions of KRS Chapter 100, and were not entitled to priority over the state board's certificate issued to Clover Creek. The applicable statutes in KRS Chapter 278 only permit a local government with a planning and zoning commission to establish setback and decommissioning requirements that regulate such facilities and may have priority over the state siting board's review. Judge Easton concurred, writing separately to explain that Breckinridge County did not enact a permissible planning and zoning agency under KRS Chapter 100. While there may be some benefits to such a decision, there are also consequences, including a loss in the level of local control. Additionally, Judge Easton explained that the 2022 Ordinance was clearly a zoning regulation. The 2025 Ordinance attempted to regulate the same subject matter and simply stating that it is not intended to be a zoning ordinance does not make it so.

AQ. *Field & Main Bank, Inc. v. Department of Highways*, 2025-CA-0216-MR, 2026 WL 1615915, (Ky. App. June 5, 2026). Opinion dismissing appeal and remanding by Easton, J.; Caldwell, J. and Combs, J. (concur).

This was an appeal of a circuit court decision granting the Commonwealth of Kentucky Transportation Cabinet's (KYTC) motion to amend its condemnation petition years after the circuit court entered the appealable (but not appealed) interlocutory order and judgment. KYTC was redesigning and constructing a roadway. KYTC originally sought 82 square feet in fee simple in addition to 657 square feet as a temporary easement for one of the roundabouts to be built at the edge of Appellant Bank's property. However, KYTC amended its petition to reduce the taking from a fee simple interest to a temporary easement for all 739 square feet. Bank appealed arguing that the motion for leave to amend the petition was untimely. This appeal raised two important procedural questions of first impression. First, what is the proper procedure when the condemnor ultimately decides to take a lesser interest after the right to take the property has been determined? Second, what is the proper procedure when a condemnee claims an inverse taking has occurred, not because of the property which is the subject of the petition, but because of traffic flow changes from the larger project involving other properties? As to the first question, the condemnation process starts with a right to take followed by possession. The taking process is not completed until compensation is decided. The interlocutory order determined KYTC's right to take, not what was ultimately to be taken. Once an interlocutory judgment establishes the right to take, this determination is final and immediately appealable. A later amendment that lessens the interest affects only compensation and does not reopen the right to take phase. The Court dismissed the Bank's challenge of the right to take as Bank failed to bring the challenge within 30 days; therefore, it lost the right to appeal. As to the second question, when a condemnee believes the overall project has caused an inverse taking, the proper procedure to make this claim is to file a counterclaim. Bank did not file a counterclaim or file a separate suit for the purposes of compensation. On remand the circuit court may be called upon to determine whether an omitted counterclaim should be allowed under CR 13.08. In this analysis, the fact that Bank has consistently argued about a total taking shows that KYTC clearly had notice of the claim. In any event, the question of lack of reasonable access must be evaluated as a matter of law. The Court ruled the appeal be dismissed and remanded.

AR. *Adkins v. Lazarus Coal, LLC*, 2025-CA-0294-MR, 2025-CA-0320-MR, 2026 WL 1721453 (Ky. App. June 12, 2026). Opinion affirming in part, vacating in part, and remanding by Caldwell, J.; Thompson, C. J. and A. Jones, J. (concur).

This appeal challenged a jury verdict in favor of Adkins in his workers' compensation retaliation claim and a cross-appeal from Adkins challenging the amount set by the trial court for attorney's fees, asserting the court failed to award a reasonable amount. Lazarus Coal, at trial, had moved for a JNOV arguing that Adkins had failed to offer proof that he had engaged in a protected activity or that Lazarus Coal had knowledge of his engaging in a protected activity prior to the adverse employment action, which they did not dispute occurred. In this action, while Adkins had not formally filed a workers' compensation claim before being laid off, he had made a report of the injury to Lazarus Coal and believed that Lazarus Coal was pursuing the claim for him. Further, Lazarus Coal personnel admitted to being aware that Adkins was pursuing workers' compensation medical benefits. Lazarus Coal also argued they could not know Adkins was pursuing workers' compensation benefits because he returned to work immediately after seeing a doctor. While Adkins did return to work the same day, he was restricted to light duty. Further, Lazarus Coal claimed it could not have known Adkins was pursuing a claim as he did not even miss a whole day of work, citing KRS 342.197(1). However, while state law imposes a duty for employees to report a work-related injury to the Department of Workers' Claims only if an employee misses more than one day of work, there is not an express severity requirement for an employee to be able to pursue a workers' compensation claim. Adkins sought attorneys' fees of $51,000 based on a lodestar calculation based on hours expended at a proposed rate. The trial court awarded only $8,000 in fees, the same amount the jury awarded for lost wages. While there is no previously published Kentucky precedent establishing how a reasonable attorney fee should be calculated in a workers' compensation retaliation case, KRS 342.197(3) is aimed at making sure workers can obtain legal representation to enforce their right to not suffer adverse actions for pursuing workers' compensation claims. The Court therefore vacated the $8,000 attorney fee award and remanded to the trial court for reconsideration of a reasonable fee, with specific findings about a lodestar figure derived from multiplying reasonable hours by a reasonable rate.

IV. CIVIL PROCEDURE

A. *Saturday on behalf of Saturday v. Fayette County Board of Education*, 2024-CA-1244-MR, 2025 WL 2485841 (Ky. App. Aug. 29, 2025). Opinion affirming by Easton, J.; Combs, J. and Lambert, J. (concur).

Appellant filed suit *pro se* on behalf of his children raising several tort claims. Despite being informed by the circuit court that he could not represent the children's interests, Appellant never hired an attorney. Following a hearing on April 10, 2024, the circuit court announced that Appellant's claims would be dismissed with prejudice while the children's claims would be dismissed without prejudice. The written order was not entered until June 4, 2024, and Appellant did not receive a copy until Saturday, June 15, 2024. Appellant filed his CR 59.05 motion on June 17, 2024. Under CR 59.05, the motion had to be served no later than June 14, 2024, and Appellant conceded the motion was untimely. Subsequently, Appellant filed a CR 60.02 motion asking the circuit court to find excusable neglect and to apply equitable tolling. The CR 60.02 motion was denied and Appellant timely appealed. Appellant argued the circuit court abused its discretion in failing to apply equitable tolling to his untimely CR 59.05 motion. "Equitable tolling pauses a limitations period and does not require any wrongdoing, but rather applies when a plaintiff, despite all due diligence . . . is unable to obtain vital information bearing on the existence of his claim." *Williams v. Hawkins*, 594 S.W.3d 189, 193 (Ky. 2020). Here the circuit court did not abuse its discretion. It was undisputed that Appellant did not receive his copy of the order until after the time had passed to timely file a CR 59.05 motion. However, he had received a courtesy copy of the order from Appellees' attorney the day before the time ran and could have signed up to be notified electronically when the order was entered. Additionally, Appellant was generally aware of the circuit court's ruling due to the April 10, 2024, hearing. Appellant also could have filed a direct appeal but instead chose to file a CR 60.02 motion. Regardless, the CR 60.02 motion was properly denied because the rule cannot be utilized to make arguments that should have been made in a direct appeal.

B. *Worick Land Holdings, L.L.C. v. Scott County Rural Land Management Board*, 2024-CA-0951-MR, 2025 WL 2552017 (Ky. App. Sept. 5, 2025). Opinion reversing and remanding by Eckerle, J.; Combs, J. and L. Jones, J. (concur).

Appellant appealed the dismissal of its action for a judicial determination of rights related to a restrictive easement affecting its land. At issue was whether the United States, which has a contingent right to enforce the easement, is a necessary party pursuant to CR 19 and the Kentucky Declaratory Judgment Act, KRS 418.075. Addressing the latter, the Court concluded that, because there was no allegation or assertion that the United States had a present right to enforce the terms of the easement, appellant's request did not affect the United States' interest. The Court of Appeals similarly held that the United States was not a necessary party pursuant to CR 19 because the court was not required to settle its rights before interpreting the terms of the easement under Kentucky law, and the requested declaration would not impair or impede the United States' prospective right of enforcement.

C. *CPV Stonecrop Solar, LLC v. Hardin County Planning and Development Commission*, 2024-CA-1393-MR, 2025 WL 2989424 (Ky. App. Oct. 24, 2025). Opinion vacating and remanding by Taylor, J.; Combs, J. and L. Jones, J. (concur).

This was an appeal from a circuit court's determination it lacked subject matter jurisdiction to hear Appellant's petition for declaratory judgment holding the tracts of land leased were exempt from the Commission's jurisdiction under the agricultural supremacy clause (KRS 100.111(22), KRS 100.111(2), and KRS 100.203(4)) and the Right to Farm Act (KRS 413.072). The Court of Appeals vacated and remanded the circuit court's ruling that it lacked subject matter jurisdiction. Considering the dictates of *Nash v. Campbell County Fiscal Court*, 345 S.W.3d 811 (Ky. 2011), the Court concluded the circuit court erred in determining that it lacked subject matter jurisdiction to adjudicate Stonecrop's petition for declaration of rights because there was no final order by the Commission. As set forth in *Nash*, the agricultural supremacy clause and the Right to Farm Act exempt real property used for agricultural purposes from the authority or regulation of city or county zoning and planning, with few exceptions. *Id*. at 815. *Nash* particularly instructed that the appropriate avenue to determine if property is used for an agricultural purpose is to file an action in circuit court. *Id*. at 815-16. Thus, Appellant had no obligation to obtain a final order from the Commission as to whether the solar farm operation constituted an agricultural use. The circuit court committed reversible error by concluding otherwise.

V. CONTEMPT ORDERS

Galvin v. First & People's Bank and Trust Company, 2024-CA-0235-MR, 720 S.W.3d 876 (Ky. App. 2025). Opinion reversing by Taylor, J.; Lambert, J. and McNeill, J. (concur).

Appellant is the President and Chief Executive Officer of U.S. Credit, Inc. (USCI). In August 2023, a lawsuit was filed against USCI for the collection of funds USCI allegedly owed under a contract. Appellant was never named as a party to the lawsuit. In December 2023, a motion for contempt was filed against USCI. Ultimately, however, an order was entered in January 2024 holding Appellant in contempt. Following entry of the contempt order, Appellant entered a limited appearance so he could file an objection to the contempt order. The circuit court never addressed Appellant's objection, and this appeal followed. The issue addressed on appeal was whether the circuit court abused its discretion in holding Appellant in contempt. After setting out the two types of contempt and the purpose of each, the Court acknowledged that while the underlying proceedings may have begun as civil contempt proceedings against USCI, "the case morphed into a criminal contempt proceeding against" Appellant. Because this was a criminal contempt proceeding against Appellant, evidence needed to be presented that Appellant had willfully disobeyed the circuit court's order, and the allegation of contempt needed to be proven beyond a reasonable doubt. Here the circuit court erred given that no evidence was presented at any of the hearings regarding Appellant's alleged contemptuous behavior. The Court also found it troubling that the circuit court failed to serve notice on Appellant, individually, of the contempt proceedings against him. As a result of these errors, the circuit court's contempt order was reversed.

VI. CONTRACTS

ISCO Industries, Inc. v. O'Neill, 2024-CA-1122-MR, 2025 WL 2263865 (Ky. App. Aug. 8, 2025). Opinion reversing and remanding by Cetrulo, J.; Acree, J. and Taylor, J. (concur).

This appeal followed several rulings over a four-year period, culminating in a jury trial on the limited claims remaining. Finding that the trial court's rulings on a motion to dismiss and a motion for partial summary judgment were in error, the Court reversed. O'Neill was a highly compensated executive at ISCO Industries for over 20 years. When he resigned, he admittedly took or copied business records that were allegedly confidential and proprietary. He had previously agreed, in writing, not to do so and had been compensated for that written agreement. ISCO sued for breach of contract, asserting further in two separate lawsuits that O'Neill had shared the alleged confidential information. O'Neill responded, asserting the "judicial statements" privilege. The trial court ruled in O'Neill's favor, applying the privilege to give him complete immunity from suit for breach of contract to the extent there were disclosures in the two other lawsuits. The Court of Appeals held, in a case of first impression, that the privilege did not apply to the "taking of and sharing of" information in the context of a breach of contract action. To hold otherwise would undermine the Court's strong public policy in favor of freedom of contract. This was also held to be more in the nature of conduct than a communicative act. The Court's precedent has found the judicial statements privilege does not cover conduct. Because the jury did not hear the evidence of the alleged breach and because the trial court did not address whether the information was in fact confidential and a material breach, the case was remanded for further proceedings.

VII. CRIMINAL

A. *Dixon v. Commonwealth*, 2024-CA-0944-MR, 2024-CA-0944-MR (Ky. App. 2025). Opinion affirming by Eckerle, J.; Caldwell and McNeill, J. (concur).

The Court affirmed Appellant's conviction and sentence noting Appellant's vacillation between private and public counsel throughout the case. The Court rejected Appellant's unpreserved claim challenging the imposition of fines where Appellant previously retained private counsel, claimed that he could afford counsel, failed to object to the trial court's imposition of fines at the sentencing stage, and did not request or obtain the trial court's determination of his "poor person" status. The Court clarified that eligibility for court-appointed counsel during some proceedings does not establish blanket indigency under KRS 534.040(4) such as to cause an automatic waiver of fines. Appellant was also not entitled to a last-minute continuance of the trial to obtain yet another new counsel where he had failed to secure new private counsel despite his repeated assurances, and his request contradicted his own adamant objections to continuances. Further, Appellant was not entitled to a mistrial due to admission of improper KRE 404(b) evidence, as the victim's testimony regarding past general conduct did not refer to a specific instance of abuse. The Court also held the Commonwealth's *voir dire* statements were not improper.

B. *Geno v. Commonwealth*, 2023-CA-1368-MR, 2025 WL 2005952 (Ky. App. July 18, 2025). Not reported in S.W. Rptr. Opinion reversing and remanding by L. Jones, J.; Acree, J. and McNeill, J. (concur).

Geno was convicted in Graves Circuit Court of sexual abuse in the first degree and sentenced to five years' imprisonment. Geno asserted a preserved error that the trial court should not have allowed the Commonwealth to present evidence of Geno's prior indecent exposure convictions. Geno requested palpable error review for the trial court's improper admission of evidence that he was "controlling" and "narcissistic" and that the victim's sister believed he killed her dog. Alternatively, Geno requested reversal for cumulative error. The Court reversed Geno's conviction because the two prior convictions of indecent exposure did not satisfy the exceptions within KRE 404(b) and unduly prejudiced the jury. The two indecent exposure convictions arose from two separate incidents involving two different women who neither knew Geno nor each other. Utilizing the three-step evaluation for admission of evidence outlined in *Bell v. Commonwealth*, 875 S.W.2d 882, 889 (Ky. 1994), the convictions were not relevant and were more prejudicial than probative in the trial for the present charge. The factual basis underlying the two prior convictions were not so peculiar as to satisfy the requirements for *modus operandi* that they be reasonably attributed to Geno for purposes of identification. Additionally, the convictions were not sufficient to show lack of mistake. Geno did not claim that he accidentally performed the acts that were the basis for the present charge; rather he denied the occurrence at all. Therefore, the prior convictions did not meet the relevancy exceptions permitted in KRE 404(b). Secondly, as Geno entered guilty pleas for the prior convictions, they were probative in the context of the second prong, as Geno acknowledged that he was the perpetrator of those acts. Lastly, however, the trial court made only the conclusory statement in its ruling that the probative value of the prior convictions outweighs the prejudicial effect, but on review, the prejudicial effect substantially outweighs the probative value. It was clear from the language of the trial court's order admitting the evidence that the trial court, even as a learned professional, had difficulty preventing the prior convictions from unduly prejudicing his view of Geno's innocence until proven guilty, and such difficulty would only be exacerbated by the jury.

C. *Higgins v. Commonwealth*, 2023-CA-1327-MR, 2025 WL 2005373 (Ky. App. July 18, 2025). Not reported in S.W. Rptr. Opinion reversing and remanding by Caldwell, J.; L. Jones, J. (concurs and files separate opinion) and Easton, J. (dissents and files separate opinion). *DISCRETIONARY REVIEW GRANTED 03/11/2026*

Higgins pled guilty in Henderson Circuit Court of complicity to second-degree robbery and was sentenced to seven years' imprisonment. Two months later, the trial court granted Higgins's motion for shock probation and entered an order suspending further execution of his sentence and placed him on probation for seven years. More than five years into his probation, Higgins was arrested in Hopkins County for multiple felony offenses, and his probation was revoked. Higgins asserted the order placing him on seven years of probation was an illegal sentence, in violation of KRS 533.020(4), for which he filed a CR 60.02 motion. Higgins sought review of the denial of his CR 60.02 motion, arguing the trial court abused its discretion by denying his motion in the face of an illegal sentence of probation. KRS 533.020(4) sets forth a limitation of five years for probation of sentences, or a reasonable amount of time for restitution to be paid, whichever is later. A court may extend a defendant's probation for longer than five years under certain circumstances that may arise as the probation continues; however, it may not as an initial matter sentence a probation period greater than five years from the outset if restitution is not an issue. To do such would be a clear violation of the statute and of the separation of powers. That the defendant consented to the seven-year probation is of no consequence – it is still an illegal sentence.

D. *Parr v. Commonwealth*, 2024-CA-0406-DG, 719 S.W.3d 714 (Ky. App. 2025). Opinion affirming by Easton, J.; Acree, J. and L. Jones, J. (concur).

The Court granted discretionary review to address whether, in DUI cases involving marijuana, the Commonwealth must present expert testimony to explain blood test results and to specifically prove how the measured levels of marijuana metabolites show impaired driving ability. The Court ultimately held that this type of expert was unnecessary in this particular case because there was ample evidence proving that Appellant was impaired while driving. The evidence included testimony of Appellant's erratic and dangerous driving for up to 20 miles, testimony that officers smelled marijuana on Appellant and in her vehicle, that she had red, glassy, bloodshot eyes when stopped, testimony that she failed her field sobriety tests, and that her blood test showed the presence of Delta-9 THC, the ingredient in marijuana that causes impairment. The Court acknowledged that there were instances when an expert may be needed to explain blood test results; however, this was not that type of case.

E. *Commonwealth v. Frazier*, 2024-CA-0366-MR, 722 S.W.3d 541 (Ky. App. 2025). Opinion reversing and remanding by Caldwell, J.; Easton, J. and L. Jones, J. (concur).

This Commonwealth's appeal arose from the circuit court's dismissal of Frazier's felon-in-possession of a firearm charge. Upon Frazier's motion, the trial court found KRS 527.040 to be facially unconstitutional as violating the second amendment in light of the U.S. Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). The trial court rejected the Commonwealth's argument that KRS 527.040 remained presumptively constitutional in the wake of *Bruen* and that the Commonwealth failed to show any history or tradition of disarming felons at the time of the founding, as required by *Bruen*. The Court of Appeals reversed and remanded to the trial court for reinstatement of the charges. The Court held that controlling precedent from the Kentucky Supreme Court in the case of *Posey v. Com.*, 185 S.W.3d 170 (Ky. 2006), had affirmed the constitutionality of KRS 527.040 under the right to bear arms in the Kentucky Constitution and that opinion also contained the necessary historical analysis required under *Bruen*. The case was analyzed only under a facial challenge as to constitutionality and not under an as-applied challenge. Even though Frazier disputed this, Frazier clearly presented only a facial challenge to the trial court and did not create an adequate record for the trial court to evaluate any as-applied constitutional challenges before submitting his motion.

F. *Tribble v. Commonwealth*, 2024-CA-0763-MR, 2025 WL 2809445 (Ky. App. Oct. 3, 2025). Opinion affirming by Cetrulo, J.; Karem, J. and Moynahan, J. (concur).

This appeal followed a conditional guilty plea that reserved the right to appeal the denial of Tribble's motion to suppress statements given by him in a custodial interrogation. Tribble argued that his statements were given after detectives employed deceptive tactics that vitiated the *Miranda* warnings, rendering his waiver involuntary. Tribble argued that the police essentially acted under the guise of defense counsel by suggesting they would go to court "with him" if he cooperated. When he then asked, "are you going to be going against me or with me?" the detective responded, "hopefully with you but it depends on you." Viewing the totality of circumstances, the circuit court concluded that the officers did not represent themselves as advocates and that Tribble was not confused about their role. The Court affirmed the circuit court, while also addressing the broader application of *Leger v. Commonwealth*, 400 S.W.3d 745 (Ky. 2013), to all rights protected by *Miranda*. Tribble also argued that his alleged lower intelligence and untreated ADD made it more likely that the officers' "deception" coerced him to confess. Again, the Court affirmed the circuit court, finding no evidence of coercion and very little evidence that Tribble had a diminished capacity. Tribble's waiver was knowing and voluntary, and the judgment was affirmed.

G. *McKissick v. Commonwealth*, 2024-CA-1404-MR, 2025 WL 3180539 (Ky. App. Nov. 14, 2025). Opinion reversing and remanding by Cetrulo, J.; L. Jones, J. and Lambert, J. (concur).

This was an appeal from the denial of a motion to suppress. The Court reversed the Christian Circuit Court, finding that the search of a passenger's bag after a traffic stop was not based upon a reasonable, articulable suspicion of criminal activity. The stop was for an expired registration. The officer testified that the driver was under 21 years of age, and he was in possession of tobacco products. The officer then ordered both occupants out of the vehicle. A second officer patted down the passenger, McKissick, and then searched his bag. That officer did not testify, and there was no bodycam video of the passenger frisk or the bag search. The Court held the Commonwealth failed to establish probable cause for the search under these facts. There was no testimony that McKissick was acting in a suspicious manner nor any evidence to support any reasonable suspicion that he was armed or dangerous. Only the driver was using tobacco products, and the statute prohibiting use of tobacco for persons under 21 only authorizes confiscation of those products, not an arrest.

H. *Petrey v. Commonwealth*, 2024-CA-0867-MR, 725 S.W.3d 558 (Ky. App. 2025). Opinion affirming by A. Jones, J.; Thompson, C. J. and Acree, J. (concur).

In a direct appeal from the trial court's judgment following its order revoking the appellant's probated sentence and imposing a five-year term of imprisonment, the Court of Appeals affirmed. The appellant contended the trial court lacked jurisdiction to revoke his probation because he earned program credits pursuant to KRS 439.268 which, in his view, led to an end to his supervision period on February 9, 2024. Because the trial court did not extend his probationary period at his first post-arrest appearance on June 5, 2024, the appellant contended the trial court lost jurisdiction to conduct the subsequent revocation hearing. In affirming the trial court, the Court of Appeals reasoned that the record established the Department of Corrections (DOC) never approved the program credits, nor did the DOC notify the sentencing court of such credits as required by [KRS 439.268(3)] and Corrections Policies and Procedures (CPP) 30.4. For these reasons, the appellant's official supervision end date remained set for August 7, 2024. In addition, even assuming *arguendo* that February 9, 2024, marked the correct discharge date, the appellant's probationary period was tolled by operation of law under [KRS 533.040(2)] for more than one year due to his earlier absconding and reinstatement. Under either rationale, the Court of Appeals held the appellant's probationary term had not yet expired when the circuit court entered its July 3, 2024, order of revocation.

I. *Commonwealth v. Stokes*, 2024-CA-1436-MR, 726 S.W.3d 1 (Ky. App. 2025). Opinion vacating and remanding by Easton, J.; Caldwell, J. (concurs) and Combs, J. (dissents and files separate opinion).

The Commonwealth appealed a circuit court order granting a motion to suppress. The case involved a fatal car crash where the victim died at the scene. Stokes, the other driver, was taken by ambulance to a hospital where his blood was drawn after giving his consent to a police officer. The blood test showed the presence of fentanyl in Stokes's system. Stokes was charged with murder. A no true bill was returned on a DUI charge. The circuit court suppressed the blood test results, ruling that the Commonwealth did not meet its burden of proof to overcome the coerciveness of the implied consent warning of potential consequences of a harsher penalty if Stokes did not consent and if he later were to be convicted of DUI. The Court of Appeals remanded the case to the circuit court. The Court ruled there was a legal flaw in the evaluation of the totality of the circumstances by the circuit court. The circuit court created a presumption of coerciveness that had to be overcome. But voluntariness of consent is a totality of the circumstances test. In *Haney v. Commonwealth*, 653 S.W.3d 559 (Ky. 2022), the Kentucky Supreme Court addressed whether consent was voluntary under the totality of the circumstances when an implied consent warning had been given. In *Haney*, the Court used the phrase: "the warning, even if it were coercive" and further stated that an implied consent warning is not a "show of force." Even something that may be inherently coercive is not necessarily coercive in fact. Creating a presumption is not consistent with a true totality of the circumstances approach. On remand, the Court directed the circuit court to consider all circumstances without any automatic preference for one over the other. The circuit court must also consider the good faith exception to the exclusionary rule because of the state of the law in Kentucky at the time of the blood draw. The dissent would have affirmed the suppression of the blood test believing that the circuit court properly considered the totality of the circumstances, including the coercive implied consent.

J. *Commonwealth v. Evans*, 2024-CA-0037-MR, 2025 WL 3492521 (Ky. App. Dec. 5, 2025). Opinion reversing and remanding by Karem, J.; Taylor, J. (concurs) and McNeill, J. (dissents and files separate opinion).

An adult son was killed by his father inside the father's home. The only living witness to the events that transpired inside the home was the father. It is undisputed that father and son began a verbal altercation outside in the yard. It is also undisputed that father went inside the home and son followed. Once inside, father shot and killed son. Father was arrested and indicted for the murder of his son. Father subsequently filed a motion seeking immunity from prosecution pursuant to KRS 503.085 and KRS 503.055, commonly known as the "castle doctrine," which precludes criminal prosecution including arrest, custodial detention, and charging when one is defending one's home. The trial court granted the motion and the case was dismissed. The Commonwealth appealed. The Court reversed the trial court finding that it erred by prematurely granting immunity and not allowing a jury to decide on the facts of the case. Additionally, the Court found the son had not made unlawful entry into the home thereby eliminating the application of the "castle doctrine." The dissent would have affirmed the finding of immunity believing that the circuit court properly considered the totality of the circumstances and had a substantial basis for its findings.

K. *Collins v. Commonwealth*, 2024-CA-1058-MR, 2025 WL (Ky. App. Dec. 12, 2025). Opinion affirming by Eckerle, J.; A. Jones, J. (concurs) and Taylor, J. (concurs in result only).

The Court held that a restitution order issued more than 10 days after sentencing was not best practices, but the defendant was not entitled to relief because he had waived the trial court's loss of particular-case jurisdiction by repeatedly waiving the issue, agreeing to delay the restitution hearing, and seeking multiple continuances of his own. With regard to the many issues the defendant failed to preserve by raising them before the trial court and yet asserting them on appeal, the Court held that the lack of details in a restitution order regarding the frequency and methods of restitution payments was a technical defect, but the defect did not cause the order to be an illegal sentence and was not a palpable error. Finally, the Court concluded that where the defendant did not claim an alleged error below, the trial court's failure to make findings regarding the defendant's financial status in a restitution order did not constitute palpable error.

L. *Commonwealth v. Thomas*, 2024-CA-0023-MR, 2025 WL 3684011 (Ky. App. Dec. 19, 2025). Opinion vacating and remanding with instructions by Acree, J.; Thompson, C. J. and A. Jones, J. (concur).

Appellee ignored a red light, entered an intersection at 95 miles per hour, collided with a second vehicle, and killed its driver. He was indicted on one count of wanton murder. Two-and-one-half years after the collision, Appellee gave notice pursuant to RCr 8.07(2) of his intention to present evidence of his compromised mental health at the time of the collision. The Commonwealth hired an expert who examined Appellee and reported a "Psychiatric Diagnosis" of "Probable Substance-Induced Psychosis, in Remission." Citing the report, Appellee filed a motion to dismiss the indictment arguing the Commonwealth could not prove *mens rea* as a necessary element of the crime. The trial court granted Appellee's motion but went further, ruling *sua sponte* that the Commonwealth engaged in prosecutorial misconduct before the grand jury, and then ruling *sua sponte* that the Commonwealth engaged in selective prosecution. The Court of Appeals found none of the three grounds for dismissing the indictment was supported by law. Citing *McCue v. Commonwealth*, 652 S.W.3d 218 (Ky. App. 2022), the Court held the motion was improper to begin with because it required the trial court to engage in substantive factfinding regarding the issue of guilt. The trial court erroneously claimed RCr 8.16 authorized granting the motion, ignoring the distinction between preliminary fact finding and substantive fact finding, which the Court of Appeals explained. In granting Appellee's motion, the trial court commandeered the criminal justice system by interloping among the grand jurors who indicted, disapproving of the evidence upon which they indicted Appellee, and by usurping the petit jury's role as factfinder. The trial court violated the separation-of-powers doctrine by unilaterally rejecting the work of the constitutionally independent grand jury. Ky. Const. §248. The trial court further erred by shifting the burden of proving sanity to the Commonwealth even before going to trial. The trial court misrepresented the holdings of several relevant published opinions (short cited in the opinion as *Craft*, *Star*, *Armstrong*, *Smith*, and *Correa-Gomez*). The trial court failed to provide the "safeguard for society" required by KRS 504.030 of "conduct[ing] an involuntary hospitalization proceeding under KRS Chapter 202A or 202B" for any defendant found not guilty by reason of insanity such as Appellee. The trial court demonstrated a fundamental misconception of prosecutorial misconduct. The trial court violated due process prior to entering an order finding prosecutorial misconduct by giving no notice to the Commonwealth that it was covertly evaluating the prosecutor's conduct. The trial court abused its discretion by ignoring the party-presentation doctrine. The trial court disregarded 170 years of jurisprudence demonstrating how RCr 5.10 limits a trial judge's authority *vis-à-vis* grand jury proceedings. The trial court abused and exceeded its limited supervisory powers by rejecting the grand jury's independent decision to indict and by encroaching upon the prosecutor's duty to carry out a core executive branch function to prosecute that indictment. The Court of Appeals closely examined *Commonwealth v. Baker*, 11 S.W.3d 585 (Ky. App. 2000), harmonizing it with Kentucky and federal jurisprudence regarding the authority of courts to assess grand jury proceedings for prosecutorial misconduct. The Court also closely examined the two-step procedure underlying *Bank of Nova Scotia v. U.S.*, 487 U.S. 250 (1988) to demonstrate how it was followed in *Baker* but not followed by the trial court in this case. Additionally, the trial court abused its discretion by invoking supervisory powers to circumvent the harmless-error inquiry for prosecutorial misconduct, just as it had occurred in *Bank of Nova Scotia*. In reviewing the trial court's dismissal on selective prosecution grounds, the Court of Appeals engaged in the Kentucky appellate courts' first substantive analysis of *U.S. v. Armstrong*, 517 U.S. 456 (1996), and applied it in this case. *Armstrong* made clear that selective prosecution claims stood independently from the merits of the criminal prosecution. Like the procedure for evaluating prosecutorial misconduct in *Bank of Nova Scotia*, *Armstrong* described a two-step process for evaluating selective prosecution claims – (1) presentation of "some evidence" that "similarly situated individuals of a different race were not prosecuted[,]" thereby allowing discovery of the prosecutor's work product; and then (2) clear and convincing proof that overcomes the presumption of regularity, *i.e.*, proof demonstrating a prosecutorial policy intended to violate "the equal protection component of the Due Process Clause of the Fifth Amendment[.]" *Id*. at 464. Finally, applying *Marchese v. Aebersold*, 530 S.W.3d 441 (Ky. 2017), the Court of Appeals ruled the trial court's receipt and own presentation of extrajudicial evidence, including the trial judge's own testimony, required the trial judge's recusal. For all these reasons, the Court vacated the order dismissing the indictment, reinstated the indictment, and remanded for further proceedings in keeping with the opinion.

M. *Nantz v. Commonwealth*, 2024-CA-1501-MR, 2024-CA-1502-MR, 2024-CA-1502-MR, 2024-CA-1504-MR, 2024-CA-1505-MR, 2024-CA-1506-MR, 2024-CA-1507-MR, 2024-CA-1508-MR, 728 S.W.3d 804 (Ky. App. 2026). Opinion affirming by Eckerle, J.; McNeill, J. and Moynahan, J. (concur).

The Court of Appeals affirmed the Harlan Circuit Court's orders revoking Appellant's probation in eight criminal cases. As a condition of probation, the trial court ordered Appellant to complete a long-term, inpatient rehabilitation program. Appellant, however, failed to complete the rehabilitation program, absconded from supervision, fled to Virginia, and admitted to continued drug use. Following a probation revocation hearing, and pursuant to KRS 439.3106, the trial court found that Appellant's failures to comply with the conditions of supervision constituted a significant risk to prior victims or the community at large, and that he could not be appropriately managed in the community. On appeal, Appellant misconstrued precedential authority in arguing that the trial court failed to provide a reviewable analysis supporting its findings. The Court clarified that a trial court's cursory recitation of the findings mandated by KRS 439.3106(1) is adequate so long as a preponderance of the evidence supports those findings. The Court further held the trial court's findings were adequately supported by a preponderance of the evidence based on Appellant's admitted lawlessness, repeated failures to comply with the conditions of his probation, and in consideration of his extensive criminal history. Lastly, the Court rejected Appellant's argument that the trial court committed reversable error by failing to impose lesser sanctions. The Court held the trial court is not required to impose lesser sanctions other than revocation and incarceration upon a finding that revocation is statutorily permissible pursuant to KRS 439.3106.

N. *Collins v. Commonwealth*, 2024-CA-0493-MR, 729 S.W.3d 193 (Ky. App. 2026). Opinion affirming by McNeill, J.; Eckerle, J. and Moynahan, J. (concur).

Trevor Collins appealed his conviction and sentence for first-degree assault and second-degree criminal mischief. The charges stemmed from an incident on January 14, 2023, at Tater's Bar in Mason County where Collins assaulted Mathew Tyler Newman in the restroom of the bar, causing serious and permanent injuries. Collins was sentenced to 15 years in prison and fined $500, with an agreed restitution amount of $183,215.39. On appeal, Collins argued that his constitutional right to a unanimous verdict was violated due to the jury instructions, and that there was no proof of a dangerous instrument used in the assault. Both issues were unpreserved, and Collins requested palpable error review. The Court found: 1) the jury instructions mirrored the statutory requirements; and 2) the evidence was sufficient to support the conviction, in part, because the restroom wall could be considered a dangerous instrument based on its use during the assault. The Court ultimately concluded there was no palpable error in the trial proceedings and upheld the conviction and sentence.

O. *Commonwealth v. Brock*, 2025-CA-0029-MR, 2026 WL 119044 (Ky. App. Jan. 16, 2026). Not reported in S.W. Rptr. Opinion vacating and remanding by Cetrulo, J.; Acree, J. and Caldwell, J. (concur).

The Commonwealth filed this interlocutory appeal of the Powell Circuit Court's order interpreting KRS 512.020(2)(b). The circuit court held the statute permits a criminal defendant to qualify for a class B misdemeanor by depositing restitution with the clerk of court to hold pending the outcome of trial. In January 2023, Brock was indicted under KRS 512.020 for criminal mischief in the first-degree, a class D felony. In July 2024, the Kentucky Legislature amended KRS 512.020 to include subsection (2)(b). This amendment permitted a defendant to reduce his sentencing exposure for a first offense to that of a class B misdemeanor upon completion of one of the following tasks prior to trial: (1) repair or replace the damaged property; (2) perform community service; or (3) pay full restitution. Brock opted to pursue option (3), but instead of paying restitution to the victim prior to trial, he proposed depositing the restitution with the clerk of court to hold pending the jury's verdict. In effect, Brock would proceed to trial on a class B misdemeanor, and if convicted, only then would the victim receive restitution. If acquitted, Brock argued that the restitution would be returned to him. The circuit court found that KRS 512.020 as amended contained ambiguities and required construing the statute in Brock's favor, thereby permitting him to proceed to trial as he proposed. The Court based its analysis solely on statutory interpretation, vacating the circuit court and holding that KRS 512.020(2)(b) was unambiguous and required the complete payment of restitution to the victim prior to trial in order to benefit from the statute's provisions.

P. *Commonwealth v. McCuiston*, 2024-CA-1109-DG, 729 S.W.3d 197 (Ky. App. 2026). Opinion reversing by Easton, J.; Thompson, C. J. and L. Jones, J. (concur).

This Court granted discretionary review in this DUI case. An officer responded to a local bar for possible shots fired. While the officer was interviewing two bar employees, McCuiston exited the bar. The employees mentioned to the officer that McCuiston had been drinking "a lot," and the officer testified he witnessed McCuiston stumble on his way to his car. The officer followed McCuiston and later pulled him over for failing to properly use a turn signal. McCuiston failed field sobriety tests, and a breath test showed a level of alcohol over the legal limit. McCuiston was arrested and charged with DUI. He moved to suppress the test results challenging the stop. He argued there is no duty to use a turn signal in a right-turn only lane. The district court denied the motion, holding there are no exceptions to the requirement to use a turn signal under KRS 189.380(2). The district court separately determined that the stop was justified based on the employees' statements and the officer's observation of McCuiston. McCuiston entered a conditional guilty plea pending the appeal of the denial of the motion to suppress. The circuit court reversed the denial of the suppression motion determining that the investigative stop was not supported by reasonable, articulable suspicion. The circuit court based its conclusion solely on the officer's inability to state the exact amount of footage traveled while McCuiston had on a turn signal. The Commonwealth sought discretionary review in the Court of Appeals, challenging the failure to give proper deference to the district court's findings of fact, and the failure to find reasonable and articulable suspicion to stop McCuiston. The Court reversed. First, the Court addressed the circuit court's reliance on a 2011 opinion of the same circuit court which held that signals were not required when in a turn only lane. There is no authority to support the proposition that a circuit court opinion, especially one entered by a judge no longer on that bench, has precedential value; thus, reliance on that opinion was improper. Next, the Court determined McCuiston was required to use a signal when turning. KRS 189.380(2) requires a continuous signal for at least 100 feet before making a turn, without any stated exceptions. The district court determined that the stop was legal, in part, because of the weight it gave the officer's testimony that a signal was not used continuously for 100-feet prior to the turn. The circuit court reassessed the officer's testimony by focusing on the officer's inability to state exactly for how many feet a signal was used. As the district court was the factfinder, the circuit court was to determine only whether there was substantial evidence to support a factual finding. There was substantial evidence to support the finding by the district court. And, even if the officer had been wrong about the distance travelled with a signal on, this did not remove probable cause to conduct the traffic stop. The Court also determined the officer had a reasonable, articulable suspicion that McCuiston was driving under the influence of alcohol. Officers often wait for a traffic infraction by an impaired driver to justify a stop, but observing erratic driving is not required for sufficient suspicion to conduct a DUI stop. The officer receiving statements from the bar employees alone but especially combined with the officer's observation of McCuiston stumbling was enough to give rise to a reasonable suspicion. The Court reversed the circuit court and remanded the case to reinstate the district court's judgment based upon its order denying the motion to suppress.

Q. *Jennings v. Commonwealth*, 2025-CA-0069-MR, 729 S.W.3d 584 (Ky. App. 2026). Opinion affirming by L. Jones, J.; Thompson, C. J. and Easton, J. (concur).

The Court held that a Kentucky court had jurisdiction over a theft by unlawful taking charge even though there was no evidence that any portion of the theft occurred within the territorial boundaries of Kentucky. Under KRS 500.060(1)(a), Kentucky courts have jurisdiction over an offense if "[e]ither the conduct or the result which is an element of the offense occurs within this state[.]" Here, the theft resulted in the unlawful exercise of control of funds belonging to a Kentucky resident held in a Kentucky bank, and the theft was intended to deprive the Kentuckian of those funds. Thus, the "result which is an element of the offense" occurred in Kentucky.

R. *Fain v. Commonwealth*, 2024-CA-0477-MR, 731 S.W.3d 486 (Ky. App. 2026). Opinion affirming by Acree, J.; Combs, J. and Eckerle, J. (concur).

Sergio Fain appeared before the trial court on the Commonwealth's motion to revoke his probation. At the hearing, Fain did not apprise the trial court that he was also on probation in Ohio, and that he was required to reside in Ohio as a condition of his Ohio probation. In lieu of revocation, the trial court amended Fain's probation to require him to reside in Kentucky. Fain did not appeal the trial court's order but subsequently filed a motion to have administration of his sentence transferred to Ohio. The trial court denied the motion and, on appeal, Fain argued the trial court placed an unreasonable condition on his probation by requiring him to reside in Kentucky, subjecting him to conflicting residency conditions. The Court of Appeals concluded Fain waived that argument by failing to appeal the order imposing the condition. Instead, Fain's appeal arose from the denial of his motion to transfer administration of his sentence. The Court of Appeals explained the trial court had no authority to grant Fain's motion to transfer administration of his sentence to another state. Such transfers are governed by regulations promulgated pursuant to KRS 439.562(7), which vest the authority in the executive branch – the Department of Corrections – in the first instance. The Court of Appeals affirmed the trial court's denial of Fain's improper motion.

S. *McKenzie v. Commonwealth*, 2024-CA-0134-MR, 2026 WL 1108810 (Ky. App. Apr. 24, 2026). Opinion reversing in part and affirming in part by Acree, J.; Combs, J. and Eckerle, J. (concur).

Appellant pleaded guilty in separate prosecutions before the same judge, each to one count of flagrant nonsupport relating to children by different mothers. His plea agreement in each case sentenced him to five years imprisonment, probated contingent upon his payment of child support to each mother. The trial court entered judgment without stating whether the sentences were to run concurrently or consecutively. Quoting KRS 532.110(1), the Court of Appeals said, "at the time of sentence" the trial court "shall determine" whether multiple sentences of imprisonment imposed on a defendant are to run concurrently or consecutively. However, if the court fails to specify how separate sentences are to run, as in this case, they shall run concurrently, subject to limited exceptions inapplicable in this case. KRS 532.110(2). By this statute, Appellant's sentences were required to run concurrently. Although the trial court was within its discretion to revoke probation, it erred by modifying the sentence to run consecutively beyond its jurisdiction which ended 10 days after entry of judgment. *Goldsmith v. Commonwealth*, 363 S.W.3d 330, 335 (Ky. 2012).

T. *Wilkey v. Commonwealth*, 2025-CA-0526-MR, 2026 WL 1189294 (Ky. App. May 1, 2026). Opinion and order affirming by Eckerle, J.; A. Jones, J. and L. Jones, J. (concur).

This appeal addressed the denial of a motion to expunge an enhanceable offense. The appellant sought to vacate and expunge her convictions for multiple offenses arising out of a single incident in 2013. Included in her application for expungement was a conviction for possession of a controlled substance, prescription not in original container, KRS 218A.210, which is a Class B misdemeanor for the first offense, enhanceable to a Class A misdemeanor for subsequent offenses. The trial court granted appellant's application except for the prescription handling offense, which, as an offense subject to enhancement, was ineligible for expungement pursuant to KRS 431.078(4)(d). Subsequently, appellant filed a CR 60.02 motion for relief from judgment and to dismiss with prejudice her conviction, which the trial court denied. Appellant also sought to use only her initials and seal her record on appeal. In affirming the trial court, the Court of Appeals held that appellant did not present an error in fact regarding her prior misdemeanor conviction under KRS 218A.210 and failed to bring her CR 60.02 motion within a reasonable time. Moreover, the Court opined that using CR 60.02 to set aside and dismiss with prejudice her conviction under KRS 218A.210 would circumvent and violate KRS 431.078(4)(d), which unequivocally provides that an enhanceable offense is ineligible for expungement. Finally, the Court of Appeals held that RAP(5)(B)(2) permits the use of initials only in "appeals arising from judgments granting expungements." As expungement of the KRS 218A.210 charge was not granted and the record addresses a non-confidential and non-expungeable criminal charge, the Court ordered the appellate record to be unsealed and remain public.

U. *Daugherty v. Commonwealth*, 2025-CA-0134-MR, 2026 WL 1261139 (Ky. App. May 8, 2026). Opinion affirming by Taylor, J.; Cetrulo, J. and A. Jones, J. (concur).

Daugherty was an inmate at the Kentucky State Penitentiary placed in the restrictive housing unit. When an officer opened the cell's tray slot, Daugherty threw liquid feces from a cup toward a nurse there to provide him medication and the officer. Daugherty was convicted of two counts of third-degree assault and being a second-degree persistent felony offender and was sentenced to 18 years. Daugherty appealed the conviction arguing the circuit court erred in denying his motions for a directed verdict. As to the nurse, Daugherty argued she was not an employee of the detention facility; thus, he could not be guilty of third-degree assault under KRS 508.025(1)(b). The Court of Appeals affirmed, ruling that under KRS 508.025(1)(b), an employee of the facility simply means a person employed and paid wages to work at the detention facility. While the nurse was not directly employed by the detention facility, she worked full time there and was required to follow the facility's regulations. The Court found the nurse was an employee under the statute. Daugherty then argued there was insufficient evidence to show he threw feces at the officer, stating he threw feces at the nurse and not the officer. The surveillance video shown at trial shows the officer standing in front of the tray slot on Daugherty's cell. The officer testified that he actually opened the cell's tray slot, and once opened, Daugherty threw feces in his and the nurse's direction. The Court affirmed, ruling there was sufficient evidence presented to prove beyond a reasonable doubt that Daugherty threw feces upon the officer's pants and shoes.

V. *Commonwealth v. Daugherty*, 2025-CA-0367-MR, 2025-CA-0752-MR, 2026 WL 1500838 (Ky. App. May 29, 2026). Opinion reversing and remanding by Thompson, C. J.; Caldwell, J. and A. Jones, J. (concur).

The Court of Appeals held that a husband who permitted his wife to testify on his behalf during two pretrial hearings could not later invoke the KRE 504(a) spousal testimony privilege at trial. The Court held that, pursuant to KRE 509, when the husband consented to his wife's disclosure of otherwise privileged information during the pretrial hearings, he waived the privilege and it could not later be invoked. The Court also held the spousal testimony privilege only applies to testimony that would be adverse or detrimental to the party spouse, not all testimony.

W. *Baggett v. Commonwealth*, 2025-CA-0396-MR, 2026 WL 1752103 (Ky. App. June 18, 2026). Opinion reversing and remanding by McNeill, J.; Easton, J. and Eckerle, J. (concur).

Billy Baggett moved to dismiss his indictment for theft by unlawful taking and first-degree criminal mischief due to the Commonwealth's failure to bring him to trial within 180 days of his request for disposition of his charges in violation of the Interstate Agreement on Detainers ("IAD"), KRS 440.450-KRS 440.510. The Commonwealth opposed the motion, claiming the IAD allows the court to grant a continuance for "good cause." The Commonwealth explained that the previous Commonwealth Attorney had failed to complete the necessary paperwork and argued that it should not be held responsible for the previous administration's mistake. The circuit court found good cause and denied the motion. On appeal, the Court reversed, holding the Commonwealth's simple failure to act within the statutory time limit did not constitute "good cause" for a continuance, considering the IAD's purpose "to encourage the expeditious and orderly disposition of . . . charges[.]" KRS 440.450 (Art. I). It also did not matter that the violation resulted from a previous administration's failure to act because the Commonwealth Attorney is merely an agent of the Commonwealth, and it is the Commonwealth that is a party to the IAD and has the duty to comply with its terms.

X. *Dominguez v. Commonwealth*, 2025-CA-0043-MR, 2026 WL 1837612 (Ky. App. June 26, 2026). Opinion affirming by Acree, J.; L. Jones, J. and Moynahan, J. (concur).

The Court of Appeals affirmed an order terminating Christian Dominguez's felony diversion program participation and sentencing him to probation. Dominguez claimed the trial court failed to comply with KRS 439.3106(1). However, the court's order did not incarcerate Dominguez as that would have required compliance with section (1). The order imposed a lesser sanction of probation authorized by section (2) which does not require such compliance. The criteria of section (1) are not prerequisites to revocation alone but to the greater sanction of incarceration. Section (2), which applies here, requires that the trial court's choice of a lesser sanction than incarceration balance "the risk of future criminal behavior by the offender [on the one hand], and[, on the other,] the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community." KRS 439.3106(2). The record shows the trial court struck that balance.

VIII. FAMILY LAW

A. *Davis v. Davis*, 2024-CA-0513-MR, 720 S.W.3d 622 (Ky. App. 2025). Opinion affirming in part, reversing in part, and remanding by Caldwell, J.; Easton, J. and L. Jones, J. (concur).

The parties filed for divorce in February 2021. In May 2021, the circuit court entered an order which, in relevant part, gave Appellant exclusive possession of the marital home and required him to make the mortgage payments. The order further stated that neither party would be responsible for child support. Thereafter, on September 2, 2021, Appellant filed a motion for child support. Appellee filed a response objecting to the motion arguing she was entitled to retroactive child support. Notably, Appellee never filed a separate motion for child support. The circuit court declined to address child support until the final hearing in September 2023. Also, in December 2023, the circuit court conducted a hearing on a motion to compel the sale of the marital residence, which resulted in an order to sell the marital home and to equally divide the net sale proceeds. A divorce decree was entered on April 2, 2024. The decree, in pertinent part, required Appellant to pay monthly child support retroactive to his September 2, 2021, motion for child support. Further, after calculating the child support arrears Appellant owed, the circuit court denied Appellant's request for credit for the payments he made on the mortgage.

Appellant filed this appeal arguing the circuit court erred in declining to give him a credit for a post-separation mortgage balance reduction and in awarding child support retroactively. On appeal, the Court affirmed the circuit court's decision to deny Appellant's request for credit for a post-separation mortgage balance reduction. Appellant argued he reduced the balance of the mortgage on the marital property before it was sold, therefore, it was equitable to award him credit. However, the Court emphasized that, unlike property, there is no presumption that debt incurred during a marriage is marital or nonmarital. And the circuit court did not abuse its discretion in finding that whatever credit Appellant may have felt entitled to was offset by Appellee's need to obtain alternate lodging, at a cost considerably more than the mortgage payments, due to Appellant's exclusive possession of the martial residence. As for the second issue, the Court reversed the circuit court's decision to make Appellant's child support payments retroactive to his September 2, 2021, motion for child support. First, the Court clarified that its review would be based on whether the circuit court complied with the controlling law about awarding child support on a non-temporary basis. Second, the Court held there was no palpable error in the family court's failure to discuss KRS 403.213 because the statute's requirements regarding modification did not clearly apply to the May 2021 temporary order in this case. However, the Court held that there was palpable error as to the circuit court awarding child support retroactive to Appellant's September 2, 2021, motion. While Kentucky allows child support to be applied retroactively, it can only be applied retroactive to the date the recipient files their motion. The rule does not extend to when the recipient's former spouse files a motion. Here, the circuit court treated Appellee's response to Appellant's September 2, 2021, motion as a motion for child support. The Court held that treating Appellee's response as a motion was patently unfair. Because Appellee had not moved for child support prior to the decree, the circuit court erred in granting child support retroactively.

B. *Herl v. Herl*, 2024-CA-0412-MR, 720 S.W.3d 885 (Ky. App. 2025). Opinion vacating and remanding by A. Jones, J.; Acree, J. and McNeill, J. (concur).

In a direct appeal from the family court's order imposing a monthly child support obligation on Appellant, the Court of Appeals vacated and remanded. Appellant and Appellee were previously married and the parents of one child when Appellee petitioned for the dissolution of the marriage in 2022. Shortly thereafter, the parties entered a marital settlement agreement (MSA) resolving custody, timesharing, child support, and division of property. Of note, the MSA provided for "[n]o child support to be set" and for the parties to share equally in daycare expenses for the minor child. The family court entered a dissolution decree incorporating the MSA. More than one year later, Appellee moved for the family court to set child support. Appellant argued the parties had expressly waived child support in the MSA, and there had been no change in material circumstances justifying a modification. After a hearing on the issue, the family court entered an order on March 6, 2024, which granted the motion and set child support in the amount of $754, retroactive to the previous November. The order did not include any reference to a change in the parties' circumstances. The Court of Appeals held the family court erroneously treated Appellee's motion as falling under KRS 403.212, as though no order respecting child support had ever been entered. When a prior decree addresses child support, whether by agreement or judicial determination, any subsequent request for change must be treated as a motion to modify under KRS 403.213. The family court's failure to apply the correct statutory framework required the Court to vacate the order and remand for further proceedings. Additionally, the Court directed the family court on remand to enter specific findings of fact and conclusions of law as to whether Appellant rebutted the statutory presumption regarding material change in circumstances under KRS 403.213(2).

C. *Motter v. Motter*, 2024-CA-1369-MR, 731 S.W.3d 24 (Ky. App. 2025). Opinion reversing and remanding by Thompson, C. J.; Acree, J. and McNeill, J. (concur).

The Court of Appeals reversed and remanded an order denying a motion to set aside a judgment which divided marital assets during a divorce proceeding. Appellant, a nonresident of Kentucky, did not participate in the divorce case and later sought to set aside the division of marital assets for lack of personal jurisdiction. Appellant claimed KRS 454.220 applied, and the trial court did not have personal jurisdiction over him. KRS 454.220 is a long-arm statute applying to family court proceedings "involving a demand for support, alimony, maintenance, distributive awards, or special relief" and requires that the action be brought within one year after the nonresident spouse leaves Kentucky. Appellant argued the action was brought more than one year after he left the state; therefore, the court had no personal jurisdiction over him. The trial court denied the motion holding that KRS 454.210, Kentucky's general long-arm statute, applied and the division of marital assets was not a proceeding included in KRS 454.220. The Court of Appeals reversed holding KRS

454.220 and its one-year limitation period applied because the division of marital assets was a distributive award for the purposes of that statute.

D. *White v. White*, 2024-CA-0725-MR, 734 S.W.3d 317 (Ky. App. 2025). Opinion affirming in part, and reversing in part by Eckerle, J.; Caldwell, J. and McNeill, J. (concur).

This is an appeal that sought relief from an order modifying a prior custody decree granting sole parental custody. The family court improvidently granted sole custody to Appellee, as she never requested that relief. Furthermore, the family court's findings did not directly address any of the statutory factors under KRS 403.340 or KRS 403.270, as required by KRS 403.340. It is not the Court's responsibility to search the record for evidence to support the statutory findings for modification of custody. *See Phelps v. Louisville Water Co.*, 103 S.W.3d 46, 53 (Ky. 2003). The order awarding sole custody was reversed and remanded to restore joint custody. The Court offered guidance on the issue of allowing the friend of the court (FOC) to testify. KRS 403.300(3) requires an FOC to provide a report that includes the required information under KRS 403.300 to counsel and any unrepresented party at least 10 days before the hearing. However, the Court concluded the statute does not specifically require inclusion of the investigator's interviews with the child. Allowing the FOC to remain in the courtroom during testimony of child's therapist and thereafter offer opinions and recommendations based on that testimony violates the separation-of-witnesses rule, KRE 615. This practice raises significant due-process concerns, as it affects the ability of a party to cross-examine the FOC effectively. Appellant also appealed being held in contempt for violation of the timesharing schedule for spring break 2023. The family court denied Appellant's motions to alter the schedule to allow the eight-hour late return of the child from a planned trip. Appellant took child on a cruise regardless. The Court found that even if the additional delay was beyond Appellant's control, the family court was entitled to consider Appellant's prior conduct to determine that he willfully violated the timesharing schedule. The finding of contempt was affirmed.

E. *Massacci-Miller v. Miller*, 2024-CA-0960-MR, 724 S.W.3d 791 (Ky. App. 2025). Opinion vacating and remanding by McNeill, J.; Caldwell, J. and Eckerle, J. (concur).

Appellant ("Mother") and Appellee ("Stepfather") were married in Ohio in 2006 and had two children. The parties divorced in 2011, and Mother gave birth to another child ("Child") who was not Stepfather's biological child. The parties remarried in 2015, and Stepfather began raising Child alongside Mother. Child's biological father ("Father") was never actively involved in Child's life. In early 2016, Mother commenced a paternity case in Ohio against Child's Father. The Ohio court entered an order establishing paternity and child support and noted that Mother would remain legal custodian of Child pursuant to Ohio Revised Code ("R.C.") 3109.042. The parties moved to Kentucky with all three children in 2016, but shortly thereafter commenced divorce proceedings. Pursuant to a marital settlement agreement, which was incorporated into the parties' 2017 decree of dissolution of marriage, Mother and Stepfather were to share joint custody of both of their children and Child. Pertinent to the appeal, Father was not notified or served with anything from the parties' dissolution proceedings. The parties amicably raised their children and Child pursuant to the terms of the marital settlement agreement for the following six years.

After some parenting issues arose in 2023, Mother ceased allowing Stepfather to exercise visitation with Child and commenced a separate civil custody matter against Father. Father was served via warning order attorney, and Stepfather was not notified or served with anything from those proceedings. After the circuit court entered a decree of sole custody in that matter, Mother moved to set aside the parties' marital settlement agreement in the underlying matter. The circuit court denied Mother's motion and maintained that Mother and Stepfather would continue to share joint custody. Mother appealed. The Court of Appeals vacated and remanded. Specifically, the Court held the circuit court inappropriately awarded joint custody to Mother and Stepfather in 2017 without first conducting a hearing and failed to adequately consider Child's best interests or Father's parental rights when Father was not served or notified of the proceedings. The Court further determined the Ohio order stating that Mother was to remain legal custodian of Child was not an initial custody determination under KRS 403.822 because the order simply noted a default custody status afforded by statute. Finally, the Court noted that, while it did not condone Mother's litigation tactics, the circuit court's actions led to two conflicting custody orders, both of which could not be contemporaneously supported by the law.

F. *Jordan v. Boss*, 2024-CA-0593-MR, 2024-CA-0632-MR, 726 S.W.3d 663 (Ky. App. 2025). Opinion reversing and remanding by Eckerle, J.; Caldwell, J. and Cetrulo, J. (concur).

Appellant/Cross-Appellee, Allen Ray Jordan ("Jordan") and Appellee/Cross-Appellant Sandy Lynn Boss ("Boss"), challenged Todd Circuit Court orders in matters relating to the dissolution of their marriage. In his direct appeal, Jordan primarily argues the trial judge was compelled to recuse himself due to unethical conduct. It is undisputed here that the trial judge engaged in impermissible, *ex parte* communications about the merits of the case and the parties, both of which were the subject of his rulings. He then declined to recuse himself. Significantly, in supplemental recusal proceedings, now-retired Chief Justice John Minton acknowledged the impropriety of the trial judge's actions but declined to order recusal at the time. Instead, he chose to allow the trial to proceed and the issues to be relitigated before the Court of Appeals. The Court reversed the trial proceedings and rulings and ordered the recusal of the trial judge, further finding that the two prior motions to recuse were timely. The improperly obtained information tainted the entire proceeding and resulted in the appearance of impropriety and unfairness. The Court remanded the case for the appointment of a special judge to try the case anew. The Court did not address the specific claims regarding each claimed error in the rulings below as to the appeal and cross-appeal, as they will not withstand the necessary recusal. The Court further denied Jordan's motion to strike Boss's brief due to relatively minor deficiencies under the circumstances.

G. *Long v. Long*, 2024-CA-1423-MR, 726 S.W.3d 659 (Ky. App. 2025). Opinion vacating and remanding by Lambert, J.; Combs, J. and Easton, J. (concur).

Father appealed from the order granting mother's motion to relocate out-of-state with the children and amend the visitation schedule. Based upon the holding in *Childress v. Hart*, 592 S.W.3d 314, 316 (Ky. App. 2019), the Court vacated the order and remanded the matter to the circuit court. *Childress* confirmed that a best interest standard governs the modification of timesharing based upon relocation for which the court must make appropriate findings of fact and conclusions of law. Here, the circuit court did not make any findings of fact or conclusions of law with respect to the best interest standard when it granted the motion to relocate. On remand, the court was directed to make appropriate findings and conclusions as well as rule on the other pending motions related to custody and visitation.

H. *F.M. v. Cabinet for Health and Family Services*, 2024-CA-1351-ME, 725 S.W.3d 552 (Ky. App. 2025). Opinion affirming by A. Jones, J.; L. Jones, J. and Karem, J. (concur).

F.M. ("Father") entered a stipulation to dependency, neglect, or abuse. As a result, he was placed on the Child Abuse and Neglect Central Registry, affecting his employment as a public-school teacher. Approximately eight months later, he filed a motion to set aside his stipulation. The family court denied his motion. The Court stated Father should have filed a direct appeal if he sought to raise ineffective assistance of counsel claims; therefore his motion was untimely. The Court also held that Father's claim lacked substantive merit. Assuming that Father's attorney had a duty to warn about collateral consequences, loss of employment is not so permanent, dire, or certain that competent counsel would have been expected to advise Father about it. No attorney can reasonably be expected to anticipate all collateral consequences that might flow from registry placement. Finally, Father entered his stipulation voluntarily and sufficient evidence existed outside of the DNA proceeding to place his name on the registry. Father additionally stipulated to the same facts in the EPO/DVO proceeding. If Father believes he was wrongfully placed on the registry, there is a separate administrative appeal.

I. *Howe v. Howe*, 2025-CA-1194-ME, 729 S.W.3d 209 (Ky. App. 2026). Opinion reversing by Thompson, C. J.; Caldwell, J. and A. Jones, J. (concur).

The Court of Appeals reversed a domestic violence order which prohibited Ms. Howe from having contact with her former husband and their two minor children. During dissolution proceedings, Mr. Howe was awarded sole custody of the children with Ms. Howe getting supervised visitation. This was due to some erratic behavior on the part of Ms. Howe which included taking the children to doctors and hospitals 20 times over a 30-day period. Despite the order for supervised visitation only, Ms. Howe took the children from the supervised visitation location and was later arrested. She then began harassing Mr. Howe and was arrested additional times. Mr. Howe sought a DVO, and it was granted. The trial court found that taking the children to doctors 20 times would have likely scared the children, and this was the reason for granting the DVO petition. The court specifically stated that no other grounds for granting the DVO were present. The Court of Appeals held there was no evidence that the medical visits scared the children, and that potential fear of excessive medical visits did not meet the definition of "fear of serious physical injury" required to grant a DVO.

J. *A.W.H. v. P.H.*, 2025-CA-1219-ME, 2026 WL 545914 (Ky. App. Feb. 27, 2026). Opinion affirming by Combs, J.; Caldwell, J. and Easton, J. (concur).

In this case, the father sought an IPO on behalf of his underaged daughter against the boyfriend who was the father of her unborn child. The boyfriend-appellant challenged the entry of the IPO because no actual physical violence occurred or was overtly threatened. The court heard extensive testimony about the very fragile mental and emotional state of the victim. She had a history of anxiety attacks and had even attempted suicide on two previous occasions. The boyfriend had hacked into her telephone repeatedly, had shown up at a school event where she was seeing another boy, and continued to harass her verbally and emotionally. As a result, she suffered severe anxiety and physical side effects from stress that he had caused, including a drop in the birth weight of the unborn child. The court determined the emotional stress caused by his behavior had produced such severe physical ramifications that an IPO was warranted. The Court agreed and affirmed.

K. *Kanabroski v. Kanabroski*, 2025-CA-0262-ME, 2026 WL 627596 (Ky. App. March 6, 2026). Opinion reversing and remanding by A. Jones, J.; Eckerle, J. (concurs) and Taylor, J. (concurs in result only).

Dana Kanabroski ("Mother") sought a domestic violence order on behalf of her two minor children against Daniel ("Father"). The children had witnessed Father choke their older stepbrother, and Mother. The family court entered a no-contact domestic violence order, *citing Crabtree v. Crabtree*, 484 S.W.3d 316 (Ky. App. 2016), for its premise that acts of domestic violence committed in close proximity to the child may be sufficient to establish a risk of imminent harm. The Court of Appeals noted the guardian *ad litem* failed to enter an appearance in this appeal, failed to file an appellee brief on behalf of the children and did not otherwise take any position in the appeal. The Court noted GALs can and should be active appellate participants, especially where there are concerns that domestic violence occurred toward the minor children. Most of the testimony Mother proffered primarily reflected conflict between the parents and poor boundaries in co-parenting, and it did not rise to the level supporting domestic violence and abuse. The only testimony warranting further analysis was testimony that Father had attempted to choke the children's stepbrother in their presence. Kentucky courts have recognized that in limited circumstances, domestic violence acts committed against third parties in presence of a child may support entry of a DVO. However, the child must be placed in fear of imminent physical injury or the conduct created a present and continuing risk of harm. The *Crabtree* case stands for the principle that when surrounding facts demonstrate the child was placed in fear of imminent physical injury or exposed to ongoing domestic violence environment. But it does not establish a rule that any isolated act of violence automatically satisfies the statutory definition under KRS 403.720(1). The Court held that acts of domestic violence committed in close proximity to a child may, in appropriate circumstances, support a DVO on the child's behalf, and the statute still requires evidence and findings tethering the conduct to fear or risk of harm to the child. Mere exposure to parental or other intrafamily conflict, without proof of fear of imminent injury or impact on the child, is insufficient.

L. *Edwards v. Edwards*, 2025-CA-0887-ME, 732 S.W.3d 72 (Ky. App. 2026). Opinion and order dismissing by Eckerle, J.; A. Jones, J. and L. Jones, J. (concur).

The Court struck the Appellant's brief, tendered *pro se*, and dismissed the appeal because the brief failed to comply with the Kentucky Rules of Appellate procedure in six major ways: 1) noncompliant statement of points and authorities; 2) lack of citations to the record in the statement of the case section; 3) dearth of citations to the record in the argument section; 4) insufficiency of citations to supportive authority; 5) absence of preservation statements; and 6) deficient appendix in which the order under review was not placed immediately after the index and which lacked citations to the location of the items in the circuit court record. The Court also rejected Appellant's unsupported argument that he had a constitutional right to oral argument on appeal. Finally, the Court rejected Appellant's contention that he had a constitutional right to appear in person to be heard in opposition to a motion to extend a domestic violence order. Precedent does not require a hearing be held at all on a motion to extend a domestic violence order, and there was no error in the trial court's decision to conduct a hearing on such a motion electronically. Appellant had notice and an opportunity to be heard electronically but intentionally chose to not participate in the hearing without showing that he was unable to do so.

M. *N.L. v. Commonwealth*, 2025-CA-0080-ME, 2025-CA-0083-ME, 2025-CA-0084-ME, 2025-CA-0086-ME, 2025-CA-0087-ME, 2025-CA-0088-ME, 2026 WL 705622 (Ky. App. Mar. 13, 2026). Opinion affirming by Caldwell, J.; McNeill, J. and Moynahan, J. (concur).

This appeal challenged the family court's finding of dependency, neglect or abuse where the court determined the minor children were educationally neglected and at risk for emotional injury. The parents challenged the family court's findings based on any alleged acts of emotional injury occurring only to an older child and that their children were homeschooled, that Kentucky law does not establish specific, clear requirements for what must be taught, and how it must be taught in a homeschool to avoid a finding of educational neglect. The court affirmed the family court's findings of the risk of emotional harm. The court held the testimony of a qualified medical professional who performed an individual assessment of the child alleged to have been emotionally injured but only reviewed the forensic interviews of the children who witnessed this treatment was enough to support the finding. The qualified medical professional testified that, based on the interviews, the other children witnessing the older child's maltreatment led them to believe that such treatment was normal, which is an observable and substantial impairment to their ability to function. In addition, even though the qualified medical professional did not observe these children in person, the statutory definition of emotional injury does not specifically require direct observation, but simply refers to an "observable" impairment. The court affirmed the finding of educational neglect in that, while no Kentucky statute specifically defines what an adequate education is for purposes of a DNA proceeding or that homeschools are subject to a minimum number of hours of instruction, KRS 620.010 states that children have a fundamental right to educational instruction and the right to develop their mental, emotional and physical potential. The family court found ample evidence for educational neglect including, but not only, that mother admitted to only laying out children's school work and providing little other instruction or any formal instruction time. It further found, based on child's testimony, that there were significant periods of no educational instruction.

N. *N.L. v. Commonwealth*, 2025-CA-0629-ME, 2025-CA-0630-ME, 2025-CA-0631-ME, 2025-CA-0637-ME, 2025-CA-0772-ME, 2025-CA-0774-ME, 2026 WL 705737 705622 (Ky. App. Mar. 13, 2026). Opinion affirming and remanding by Caldwell, J.; McNeill, J. and Moynahan, J. (concur).

This appeal challenged the family court's finding of civil contempt for failing to keep the children enrolled in in-person school. By the time of the contempt hearing, the children were enrolled in Ann Arbor schools. The appeal further challenged the trial court's imposition of sanctions for civil contempt as the parties argued they were fully in compliance with court orders at the time of the hearing and the sanctions amounted to punishment for potential future behavior. The Court affirmed the family court's finding of contempt. The court's order had been for the children, who had been determined to have suffered educational neglect at the hands of the parents, to be enrolled in in-person school. They were required to attend school daily, and the parents were to provide documentation of school attendance quarterly. The children, who had been enrolled in Jefferson County Public Schools, were unenrolled on January 13, 2025, and were not reenrolled in an in-person school until they were enrolled in Ann Arbor Schools on March 11, 2025. At the time of the hearing in late March 2025, only one of the minor children had actually attended Ann Arbor Schools. As for the sanctions (a sentence of 90 days of incarceration conditionally discharged for two years), the Court found it to be an appropriate coercive sanction to ensure future compliance with the trial court's orders, and not a punitive sanction for future possible misconduct. There was no proof that the parents were incapable of sending their children to in-person school each day. The Court remanded the case to the trial court to amend the sanction to expressly state that the parents would be entitled to notice, a hearing and a finding that they are not incapable of following the court's orders for any future violations.

O. *Commonwealth v. A.L.*, 2025-CA-1258-ME, 2026 WL 784561 (Ky. App. Mar. 25, 2026). Opinion affirming by Karem, J.; Easton, J. and Taylor, J. (concur).

The Cabinet of Health and Family Services (the "Cabinet") filed a petition for emergency custody following a report of bruising on a three-month-old child's abdomen. The trial court granted emergency custody to the Cabinet and set the case for a temporary removal hearing. At the hearing, the child was represented by a guardian *ad litem*. Parents were represented by private counsel. The Bullitt County Attorney ("BCA") presented evidence in the form of testimony by the Cabinet's social worker. Finding the Commonwealth had not proven its case by a preponderance of the evidence, the trial court returned the child to the custody of the parents and set the case for a final hearing. In an effort to defend the dependency, neglect, and abuse (DNA) case, the parents' attorney propounded to the BCA requests for discovery, including a request for admissions. The BCA maintained throughout the litigation that it was not its responsibility to respond to the discovery request for admissions because the responses would need to be obtained from the Cabinet. Because the

BCA never responded to the request for admissions, the trial court granted the parents' motion to deem them admitted. The BCA was therefore limited in its presentation of evidence at trial as to the social worker's testimony. The BCA's expert was not allowed to testify as her purported testimony would contradict the admissions. At trial, the BCA motioned the trial court to allow their expert to testify, arguing the parents "opened the door" to her testimony during the cross-examination of the social worker. When the trial court overruled the motion, the BCA requested the expert be allowed to testify by avowal. The trial court overruled that motion as well. Ultimately, the trial court found that dependency, neglect, or abuse had not been proven, and the case was dismissed. The Court affirmed the trial court's finding that it is the responsibility of the county attorney to respond to discovery in a DNA case. The trial court did not err in disallowing the testimony of the BCA's expert due to the failure of the BCA to respond to the request for admissions. Further, the parents did not "open the door" to allowing the disallowed testimony.

P. *Fisher v. Meikle*, 2025-CA-1409-ME, 2026 WL 1501015 (Ky. App. May 29, 2026). Opinion affirming by Easton, J.; A. Jones, J. and Moynahan, J. (concur).

This is an appeal of the family court's decision to not issue a domestic violence order (DVO). Appellant Mother filed the petition on behalf of her minor children against Appellee, Cala Meikle ("Cala"), the girlfriend of the children's father. A therapist who was working with the children testified at the DVO hearing regarding bruises she witnessed on the children and statements the children made about Cala. A friend of the court (FOC) also testified as to statements made by the children. For both witnesses, Cala's counsel objected to the children's statements as hearsay. The family court determined the KRE 803(4) hearsay exception did not apply in these circumstances and did not allow the hearsay testimony. Mother argued that the testimony of the children's statements should have been allowed. Cala argued that only a GAL has standing to appeal. The Court found Mother had standing to bring this appeal. As to the hearsay issue, the statements were properly excluded as the exceptions in KRE 803(3) and KRE 803(4) do not apply. KRE 803(3) allows statements of then existing mental, emotion, or physical condition. This argument was never presented to the circuit court; therefore, it was improperly before the Court of Appeals. Also, the exception would not apply as the children were relaying what had occurred to cause their injuries, not their then existing condition. KRE 803(4) allows statements for purposes of medical treatment or diagnosis. Mother argued the therapist's statement should be admitted citing to *D.L.B. v. Cabinet for Health and Family Services*, 418 S.W.3d 426 (Ky. App. 2014), in which the Court determined it was an abuse of discretion to not allow the children's therapist to testify regarding the children's statements. However, *D.L.B.* is distinguishable because it was a termination action where an overall best-interest analysis is required. There was no abuse of discretion to limit the testimony in the instant case. The hearsay exceptions that apply to FOCs are not applicable here as he was appointed for the custody proceedings, not this DVO action. The FOC was merely a fact witness. The Court affirmed the family court's determination.

Q. *York v. Hamlet*, 2024-CA-1406-MR, 2026 WL 1616086 (Ky. App. June 5, 2026). Opinion affirming by A. Jones, J.; Combs, J. and Karem, J. (concur).

The Appellant grandparents appealed the order of the successor family court judge who dismissed their petition seeking *de facto* custodian status and custody of their grandchild. The Appellants argued the successor family court judge lacked authority to revisit an earlier interlocutory finding by a prior special judge which determined that they qualified for *de facto* custodian status. In the alternative, they argued the family court's final judgment is not supported by substantial evidence. The Court of Appeals affirmed the family court's final judgment. First, the Court considered and rejected Appellants' argument that the successor family court judge lacked authority, holding that trial courts always have the ability to revise interlocutory decisions prior to their finality under CR 54.02. In this instance, the record reflected that the prior special judge's decision was not in an order made final by operation of CR 54.02, and it was thus subject to revision by the successor family court judge. Second, the Court of Appeals considered and rejected Appellants' argument that the family court's final judgment denying *de facto* custodianship was not supported by substantial evidence. The record reflected that, while Appellants were a significant source of support for the child, there was also evidence supporting the Appellee father's position that he did not relinquish or abandon his parental role. There was also testimony that Appellee father was consulted by Appellant grandparents regarding significant decisions involving the child's care. The presence of conflicting testimony regarding the child's care meant that the successor family court judge, acting as the factfinder, was entitled to weigh the competing testimony and resolve the dispute, and the Court of Appeals will not substitute its judgment in such instances.

R. *A.S. v. Commonwealth*, 2025-CA-1265-ME, 2025-CA-1267-ME, 2026 WL 1722320 (Ky. App. June 12, 2026). Opinion reversing and remanding by Eckerle, J.; Easton, J. and McNeill, J. (concur).

In January 2025, Appellee, the Cabinet for Health and Family Services ("the Cabinet") filed dependency, neglect, and abuse ("DNA") petitions regarding minor children, C.S. ("Child") and C.S. ("Brother"), after receiving a report that joint Appellants, A.S. ("Mother") and T.S. ("Father"), had sexually abused Child. The DNA petitions were based on statements that Child had made about the alleged abuse to a guidance counselor at her school and a forensic interviewer with the Children's Advocacy Center of Kentucky ("CACK"). During the adjudicative hearing, the family court had attempted taking *in camera* testimony directly from Child. However, Child was unable to give intelligible answers to foundational questions posed by the presiding trial judge and the Child's guardian *ad litem* ("GAL"), including whether Child knew the differences between truths and lies. The family court determined Child to be incompetent to testify. The Cabinet also called Child's guidance counselor and the CACK interviewer who conducted Child's forensic interview as witnesses, both of whom testified about the statements of the alleged sexual abuse that Child had made to them. Over the objections to hearsay posed by Appellants' counsel, the family court allowed the testimony about Child's statements to be admitted. The family court specifically ruled the statement made to the guidance counselor was admissible as an excited utterance exception and the statement made to the CACK interviewer was admissible under KRE 804A, as Child was unavailable to testify due to her incompetence, and the statement to the guidance counselor served as corroborating evidence. Based solely on those two hearsay statements, the family court found Child to have been sexually abused by Appellants, and that Brother was at risk of abuse. Mother and Father appealed after a final dispositional order was entered. Notably, the Cabinet failed to file a response brief, but the GAL filed a brief in agreement with the Appellants.

The Court of Appeals reversed and remanded. The Court specifically held the family court erred in failing to consider Child's testimonial incompetence as an obstacle for her statement to the guidance counselor to be admitted under *B.B. v. Commonwealth*, 226 S.W.3d 47, 51 (Ky. 2007), especially in light of other factors that weighed against the statement's admittance, including the lack of a timeframe for the alleged abuse and Child's generally excitable emotional state. The Court further held (notwithstanding the Kentucky Supreme Court's declining to adopt KRE 804A as enacted in 2018) the family court also erred in allowing Child's statement to the CACK interviewer to be admitted under KRE 804A. The family court failed to consider Child's testimonial incompetence as a factor weighing against admittance. In addition, there was an inappropriate inference to the truthfulness of Child's statement based on the CACK interviewer's experience and credentials, especially as she was not called as an expert witness and not entitled to offer opinion testimony. The family court also erred by determining Child's statement to the guidance counselor served as corroborating evidence, as the same hearsay statement made at different times cannot corroborate itself.

S. *Yelton v. Yelton*, 2025-CA-0723-MR, 2026 WL 1752369 (Ky. App. June 18, 2026). Opinion and order affirming in part, vacating in part, and remanding by Eckerle, J.; Easton, J. and McNeill, J. (concur).

In a dissolution of marriage action, Wife claimed that a bar Husband owned prior to marriage had increased in value during the marriage, that increase was a marital asset due to the parties' joint efforts during the marriage, and that she was thus entitled to receive a just share of the marital increase. The Court was unpersuaded because the undisputed testimony at trial showed the bar's value had decreased during the marriage. The Court also discounted Wife's claim Husband had gifted her an ownership interest in the bar because she had not presented evidence that Husband made her a record title owner of the bar or allowed her to hire or fire bar employees. Regarding the sale of the marital residence, the Court vacated the family court's findings and conclusions distributing proceeds. Both Husband and Wife claimed to have expended nonmarital funds towards building the marital residence, but the family court had improperly declined to apply mandatory tracing principles to determine whether either party had demonstrated a nonmarital ownership interest. The family court also used internally inconsistent sums when determining Wife's and Husband's nonmarital contributions, and it failed to account for Wife's uncontested, nonmarital contribution. As to a checking account owned by Wife alone at the time of the marriage, but to which she had later added Husband, Wife failed to trace the nonmarital funds on the wedding day to presently-held assets. While Wife's argument was consistent with our holding in *Allen v. Allen*, 584 S.W.2d 599 (Ky. App. 1979), in

Chenault v. Chenault, 799 S.W.2d 575, 578-79 (Ky. 1990), the Supreme Court explicitly declined to adopt the *Allen* approach, and so it is unclear if *Allen* retains any precedential value. Regardless, and unlike *Allen*, the balance in the account at issue had sometimes fallen below the balance on the parties' wedding day, which is the determinative factor. The Court affirmed the family court's conclusion that Wife should be responsible for half of the tax debt stemming from Husband's withdrawal of funds from his nonmarital retirement account. The evidence showed the tax debt was jointly incurred to further the parties' joint interest in building a marital residence and thus was a marital debt. The Court also rejected Wife's argument that Husband should receive credit for only the reduction in the principal owed on her nonmarital residence via expenditure of marital funds, not a dollar-for-dollar credit for the expended marital funds. The Court declined to be the first to address whether Wife was entitled to attorney's fees incurred in discovery disputes. The Court remanded the issue to the family court to make an initial decision because appellate courts are not factfinders. Finally, the Court rejected Wife's argument that the family court had rotely adopted a proposed judgment tendered by Husband. The final judgment issued by the family court was similar to Husband's tendered judgment, but a side-by-side comparison of the two judgments showed the family court had made several substantive amendments to Husband's tendered judgment.

IX. GOVERNMENTAL IMMUNITY

University of Louisville v. Wolek, 2024-CA-1246-MR, 2025 WL 2989377 (Ky. App. Oct. 24, 2025). Opinion affirming by Eckerle, J.; Thompson, C. J. and L. Jones, J. (concur).

Appellee, a professor at the University of Louisville, filed suit against the University, alleging a violation of the Kentucky Campus Free Speech Protection Act, KRS 164.348. The Court of Appeals affirmed the Jefferson Circuit Court's denial of the University's motion for judgment on the pleadings. The Court held Appellee alleged sufficient questions of fact precluding judgment. Specifically, the Court reasoned that immunity remained a triable defense considering the pleadings presented issues of fact regarding whether Appellee's claim accrued within the General Assembly's one-year prescribed waiver of governmental immunity.

X. IMMUNITY

Lane v. Kentucky Department of Corrections, 2024-CA-0597-MR, 2025 WL 2678860 (Ky. App. Sept. 19, 2025). Not reported in S.W. Rptr. Opinion affirming in part, reversing in part, and remanding by A. Jones, J.; Caldwell, J. and Cetrulo, J. (concur). Discretionary review granted 04/15/2026.

In a direct appeal from the trial court's order granting summary judgment to all respondents, the Court of Appeals affirmed in part, reversed in part, and remanded. The case stemmed from an incident in which a felony probationer, Keyshaun Stewart, shot two individuals, killing one and injuring the other, while under supervision by the Kentucky Department of Corrections (KDOC). Stewart's supervising probation officer, Christopher Mull, received information that Stewart had been arrested prior to this incident for a felony in Tennessee, yet he failed to report Stewart's arrest to the Commonwealth or the trial court. Similarly, when

Stewart pleaded guilty to the Tennessee felony, Mull failed to report this conviction to the Commonwealth or the trial court. Following the shooting, KDOC conducted an internal investigation and discovered that Mull had failed to report in accord with KDOC policies, and Mull's employment was terminated. The surviving victim of the shooting and the estate of the deceased victim filed suit against KDOC and several of its employees, including Mull, asserting negligence, negligence *per se*, vicarious liability, and negligent hiring, supervision, and retention. The trial court granted summary judgment to KDOC and all other respondents on the basis of sovereign immunity. The trial court also found there was no special relationship between the KDOC employees and the victims sufficient to impose a legal duty, which meant the respondents were not liable as a matter of law. The trial court did not reach the issue of qualified immunity, and it found insufficient evidence to support the negligent hiring and vicarious liability claims.

On appeal, Appellants declined to challenge the dismissal of all claims except those against Mull and his supervisors: Director Hargis, Supervisor Patterson, and Assistant Supervisor Ryan. Appellants contended that genuine issues of material fact preclude summary judgment on their claims for negligence, negligent supervision, and vicarious liability, and that the trial court erred in concluding these Appellees owed no legal duty to Appellants as a matter of law. For their part, Appellees contended the trial court correctly determined the question of duty, and furthermore it was unnecessary to reach the issue of duty regarding Director Hargis, Supervisor Patterson, and Assistant Supervisor Ryan because they were entitled to qualified immunity. The Court of Appeals held the supervisors were entitled to qualified official immunity, reasoning that these respondents were acting within the scope of their discretionary authority, and there was no evidence of bad faith in their actions. However, because Mull's duty to report was unquestionably ministerial, he was not entitled to qualified immunity. The Court of Appeals also considered the application of the special relationship exception to the public duty doctrine and determined the exception is not confined to a single factual scenario. While custody of the victim remains the most straightforward basis for finding a duty, Kentucky precedent also supports the conclusion that custody of the perpetrator, substantial governmental control, or the plaintiff's reasonable reliance on a governmental undertaking may suffice. Following its analysis, the Court determined that the supervisory relationship between Mull and Stewart fell within the type of special relationship giving rise to a legal duty. However, the Court also determined that liability did not automatically follow from a finding of legal duty, and there were other questions regarding causation which must be addressed as a question of material fact by a jury. The Court of Appeals remanded the matter to the trial court for further proceedings.

XI. INSURANCE LAW

A. *Kentucky Association of Counties All Lines Fund (KALF) v. City of Somerset*, 2024-CA-0426-MR, 2025 WL 1909349 (Ky. App. July 11, 2025). Opinion affirming in part, reversing in part, and remanding by Eckerle, J.; Acree, J. and Combs, J. (concur).

This appeal arose from the Pulaski Circuit Court's order dismissing KALF's complaint with prejudice and denying Somerset's request for attorneys' fees. The case involved a single-vehicle collision of a firetruck, jointly owned by Pulaski County and the City of Somerset, into a building while firefighters were performing maintenance on the firetruck at the fire station. Though KALF paid for the total loss of the firetruck and the damages to the non-fire station victims, KALF sought subrogation from the City of Somerset for all payments, arguing their firefighters caused the damage and were not covered by the policy because the maintenance performed when the accident occurred did not constitute "use" of the firetruck. Maintenance performed on the firetruck must be considered use of the firetruck, and therefore the City of Somerset and the other listed parties were "insureds" under the policy. The City of Somerset also cross-appealed the Pulaski Circuit Court's denial of attorneys' fees. The insurance policy at issue in this case contained a duty to defend provision which provides that the City of Somerset is entitled to attorneys' fees to be paid by KALF in its defense that it was a putative insured. As the City of Somerset was contractually entitled to attorneys' fees, the order denying attorneys' fees was reversed and remanded back to the circuit court to award the amount in attorneys' fees that it deems reasonable.

B. *2 Brothers Market, LLC v. Kentucky Farm Bureau Insurance Company*, 2024-CA-0755-MR, 2025 WL 3247475 (Ky. App. Nov. 21, 2025). Opinion affirming by Taylor, J.; Acree, J. and Cetrulo, J. (concur).

In a declaratory action, the Jefferson Circuit Court granted summary judgment in favor of the appellee ("KFB"), finding that a commercial general liability ("CGL") policy KFB had issued to appellant 2 Brothers Market, LLC, ("2 Brothers") did not obligate KFB to defend or indemnify 2 Brothers or its member and employee, appellant Safwat Ballasi, in a wrongful death action asserted against those appellants by the Estate of Johnathon Dupin for Ballasi's fatal shooting of its decedent. 2 Brothers and Ballasi appealed. The Court of Appeals affirmed on the ground that 2 Brothers and Ballasi could not be considered KFB's "insureds" considering the evidence presented and circumstances alleged in the Estate's complaint. The language of KFB's CGL policy indicated that whether Ballasi and 2 Brothers qualified as "insureds" depended upon whether Ballasi was acting within the scope of his employment when he shot Dupin. The appellants believed Ballasi was doing so when he shot Dupin because he shot Dupin while working his shift as the manager of 2 Brothers' convenience store; the shooting had occurred on 2 Brothers' business premises; Ballasi had shot Dupin with a gun obtained from his interaction with a 2 Brothers customer; and because interacting with customers and building rapport with them was, in the appellants' view, part of Ballasi's everyday duties as a manager and "good for business."

However, as the Court explained, ascertaining whether a given act is within the scope of employment is not simply a matter of determining whether the act occurred during the servant's shift or on the business's premises, or whether the act that led to the shooting was of some tangential benefit to the employer's business. An act is within the scope of employment when it is necessary to accomplish the purpose of the employment and intended for that purpose. Here, Ballasi did not accidentally discharge a gun that could have been viewed as a tool of his business, nor did he do so while attempting to complete a sale. Ballasi did not own the gun he fired at Dupin, nor had he seen it before that date. He obtained the weapon after a regular customer of the convenience store came to the store, purchased inventory, and then later offered to show Ballasi two guns he had in his possession. Ballasi also did not use the gun in an attempt to defend himself from a foreseeable threat of harm posed by his employment. Further, Ballasi's manipulation of the handgun – his act that ultimately led to Dupin's death – was not necessary to accomplish the purpose of his employment. According to the recitals of its CGL policy, 2 Brothers was in the business of operating "Convenience Food Stores With Limited Cooking Restaurant – No Gasoline Sales[.]" It was not in the business of inspecting the firearms of its customers. Thus, regardless of whether Ballasi was inspecting the handgun that ultimately killed Dupin or simply playing with it, his act could not be considered within the scope of 2 Brothers' business, within the scope of Ballasi's conduct of its business, nor within the scope of Ballasi's duties as its employee. Thus, neither Ballasi, nor 2 Brothers (by virtue of vicarious liability principles), were "insureds" under the CGL policy issued by KFB and were accordingly not entitled to coverage.

XII. KENTUCKY UNIFORM ARBITRATION ACT

Fidelity Brokerage Services LLC v. Estate of Bolton, 2024-CA-0514-MR, 2026 WL 784745 (Ky. App. Mar. 25, 2026). Opinion affirming by Caldwell, J.; Cetrulo, J. (concurs) and Eckerle, J. (dissents and files separate opinion).

This appeal challenged the trial court's determination that it did not have subject matter jurisdiction to enforce an arbitration agreement upon motion by Fidelity Brokerage Services LLC to either dismiss the action pursuant to CR 12.02(a),(c) or (f) or, in the alternative, compel arbitration in accordance with the Federal Arbitration Act (FAA). The Court affirmed the trial court. While Fidelity argued arbitration was enforceable under the FAA, the agreement tendered to the trial court by the Appellant had no explicit indication it would be governed by the FAA. It explicitly contained a choice-of-law provision for Massachusetts law to govern enforcement of the contract with no exclusion for application of the Massachusetts Arbitration Act. Because the agreement did not contain a provision that arbitration would take place in Kentucky, the trial court correctly concluded it lacked subject matter jurisdiction to compel arbitration under the KUAA (Kentucky Uniform Arbitration Act). The dissent would have held that the trial court, having concluded that it lacked subject-matter jurisdiction to enforce the arbitration agreement, should have remanded the motion, dismissed the lawsuit outright, and advised the parties that they should sue in Massachusetts, the choice of-law state. The dissent found the trial court below lacked jurisdiction not just regarding the arbitration agreement, but that it was not a competent court of jurisdiction to adjudicate any of the merits of the controversy. Therefore, it was required to remand the motion and dismiss the case.

XIII. PAROLE

Holland v. Kentucky Parole Board, 2024-CA-0943-MR, 720 S.W.3d 893 (Ky. App. 2025). Opinion affirming by Lambert, J.; Cetrulo, J. and Combs, J. (concur).

This matter involved appeal in a parole revocation case from an order dismissing Holland's declaratory judgment action against the Parole Board as moot. Holland asserted below that the Parole Board had not heard his case within 60 days of being returned to state custody pursuant to KRS 439.440. The Court affirmed, holding that Holland's remedy was limited to a *mandamus* action to force the Parole Board to act, rather than a declaratory action. Because the Parole Board had already issued its decision, albeit shortly outside of the 60-day period, Holland's petition was moot. The Court also addressed the use of its opinions that have been depublished by the Supreme Court of Kentucky, discussing *Normandy Farm, LLC v. Kenneth McPeek Racing Stable, Inc.*, 701 S.W.3d 129, 137 (Ky. 2024), and the holding that because a party relied heavily upon a depublished opinion, the Court would consider its reasoning, but it discouraged reliance upon such opinions.

XIV. PROBATION REVOCATION

Mays v. Commonwealth, 2025-CA-0377-MR, 2026 WL 1354866 (Ky. App. May 15, 2026). Opinion affirming by Moynahan, J.; A. Jones, J. and Karem, J. (concur).

After defendant Mays pled guilty to second-degree robbery, the Jefferson Circuit Court imposed a 10-year sentence, probated for a period of five years. His probation was later revoked several times, including after multiple shock probation motions had been granted. During a probation revocation hearing that occurred more than five years after he was initially sentenced, defendant moved under KRS 533.020(4) to be discharged from probation, claiming the circuit court no longer retained jurisdiction over his probation because of the five-year statutory cap. The circuit court denied his request, revoked Mays' probation for the final time, and sentenced him to the remaining portion of his original 10-year sentence. The Court of Appeals affirmed, holding that when a probation revocation occurs, the original probationary term is extinguished and any subsequent sentence imposed creates, in effect, a new probation term that re-starts the five-year limitation found in KRS 533.020(4). Put another way, a court's granting a motion for shock probation following a revocation does not resume the prior probationary period. Thus, in this instance, the circuit court properly retained jurisdiction to revoke Mays's probation.

XV. PROCEDURE

A. *Kentucky Bluegrass Experience Resort v. Woodford County Board of Adjustments*, 2023-CA-0877-MR, 731 S.W.3d 13 (Ky. App. 2025). Opinion affirming by A. Jones, J.; Combs, J. and Karem, J. (concur).

The Appellant, Kentucky Bluegrass Experience Resort (KBER) petitioned the trial court for a declaration of rights against the Appellee, City of Midway (Midway). Appellant sought to compel Midway to provide sewer services to its property, which is outside Midway's municipal boundaries, so Appellant could construct a recreational vehicle (RV) park in a zone marked for agriculture. Obtaining city sewer service was mandatory under the terms of a conditional use permit issued by the Woodford County Board of Adjustments in order for the RV park project to proceed. After a public hearing in which many local residents expressed opposition based on the size and scope of the proposed RV park, Midway denied sewer service to Appellant. In a direct appeal from the trial court's order granting Midway's motion to dismiss, the Court of Appeals affirmed. Appellant presented five arguments on appeal, arguing: (1) Midway, as a public utility, discriminated against Appellant with respect to rates and services; (2) Midway violated KRS 96.910 and KRS 96.539 by its failure to provide sanitary sewer services; (3) Midway was estopped from denying sewer services to Appellant; (4) Midway waived its right to deny sanitary sewer services by providing them to Appellant's neighbors; and (5) the trial court erroneously denied Appellant an opportunity to amend its complaint to cure deficiencies. The Court of Appeals rejected Appellant's arguments. Precedent establishes that the extension of utility services is a discretionary matter for a city, and the Kentucky Supreme Court has held that "[t]he judiciary should not second-guess the judgment of local government officials." *Commonwealth v. Jameson*, 215 S.W.3d 9, 35 (Ky. 2006). The statutes cited by Appellant do not create an affirmative obligation on the part of the city to provide sewer services outside its boundary. Equitable estoppel only applies to a governmental entity under exceptional circumstances, and Appellant could not show how the mayor's initial support for the project could reasonably be said to bind the votes of Midway's city council. In addition, Appellant could not demonstrate how Midway had relinquished a known right by choosing when to provide services. The trial court did not erroneously deny Appellant the opportunity to amend its complaint because Appellant never actually requested leave to amend its complaint during the proceedings. Thus, the trial court was never actually called upon to make a ruling. A non-ruling by the trial court is not reviewable at the appellate level. *Jones v. Livesay*, 551 S.W.3d 47, 52 (Ky. App. 2018). Finally, the Court of Appeals reaffirmed that the courts are not at liberty to second-guess the actions of local government officials without some showing that the actions were arbitrary. Using the test for arbitrariness outlined in *Hilltop Basic Resources, Inc. v. County of Boone*, 180 S.W.3d 464, 467 (Ky. 2005), the Court held that Midway was within its granted powers in denying the request for services, and Appellant was afforded procedural due process by its participation in the public hearings leading up to Midway's decision. The third and final element of the test asks whether Midway's decision was supported by substantial evidence, and this element was met by the opposing testimony of residents evinced during the public hearings.

B. *Dale v. Tipton*, 2024-CA-0298-MR, 723 S.W.3d 834 (Ky. App. 2025). Opinion affirming by Lambert, J.; Acree, J. (concurs) and Caldwell, J. (concurs in result only).

This matter involved an appeal from a summary judgment dismissing the plaintiff's personal injury claim against the defendant as untimely pursuant to KRS 304.39-230(6). The plaintiff relied upon his carrier's PIP log to calculate when the two-year statute of limitations began to run. However, the PIP log did not indicate that the last payment was in fact a replacement payment for a lost check issued prior to the exhaustion of his PIP benefits, even though this was not indicated in the "replacement check" column. The Court affirmed, holding that KRS 304.39-230(6) does not reference a PIP log but provides that the statute of limitations runs from the date of the last PIP payment and that a replacement payment does not extend the date beyond the date of the original payment, meaning the plaintiff did not timely file his complaint. The Court also rejected the plaintiff's equitable tolling and estoppel arguments because he could not establish that extraordinary circumstances prevented the timely filing of the complaint. He received a letter from his carrier informing him that his PIP benefits were exhausted in October 2017, and his counsel obtained medical records and bills that would have revealed that a duplicate payment had been issued. There was also no indication the defendant knew of the alleged misrepresentation on the PIP log or was aware of and concealed this from the plaintiff.

C. *Barrett v. Administrative Office of the Courts*, 2024-CA-0986-MR, 719 S.W.3d 467 (Ky. App. 2025). Opinion affirming by A. Jones, J.; L. Jones, J. and Karem, J. (concur).

The Court of Appeals affirmed the trial court's order affirming a decision of the Personnel Board. Appellant, a former employee of the Administrative Office of the Courts (AOC), contested the termination of her employment at that agency. She appealed her termination to the Personnel Board, alleging retaliatory discharge. However, after AOC made a special appearance, the hearing officer agreed with AOC that the Personnel Board lacked jurisdiction and dismissed the appeal. The Personnel Board adopted the hearing officer's recommendation, and the trial court affirmed. In affirming the trial court, the Court of Appeals held that the key factor is that Appellant was employed by the judicial branch. AOC, as a judicial branch agency, is excluded from the Personnel Board's jurisdiction as a constitutional matter because the Personnel Board is an agency of the executive branch. Personnel decisions within the judicial branch are not subject to legislative control or executive oversight, as the Kentucky Supreme Court "has *exclusive* jurisdiction over the agencies and personnel under its control." *Arkk Properties, LLC v. Cameron*, 681 S.W.3d 133, 139 (Ky. 2023) (emphasis added). For this reason, the Court of Appeals determined the trial court had correctly applied the law and affirmed.

D. *Commonwealth v. Campbell*, 2024-CA-0429-MR, 2025 WL 2087474 (Ky. App. July 25, 2025). Opinion affirming by Cetrulo, J.; Caldwell, J. and Eckerle, J. (concur).

The Commonwealth appealed a Graves Circuit Court order denying its motion to proffer expert testimony pertaining to a child victim's delay in disclosing sexual abuse during its case-in-chief. The circuit court held a *Daubert* hearing but excluded the expert testimony without first determining the reliability of the science/research into delayed disclosure by child victims of sexual assault. Despite this error, the Court held the trial court properly concluded Kentucky case law prohibits such testimony during the Commonwealth's case-in-chief. Precedent has established that such testimony is inadmissible to show the existence of abuse and/or the guilt of the defendant. However, precedent may allow for such testimony to be admitted on rebuttal if verified through a *Daubert* analysis and if presented to rebut a claim by the defendant that the child's delay in disclosing the abuse was indicative of deceit. Consequently, the matter was remanded for *Daubert* findings if the Commonwealth attempts to admit the expert testimony during rebuttal within the guidelines specified and trial.

XVI. PROPERTY VALUATION

Lowe's Home Centers, LLC v. Arnold, 2024-CA-0307-MR, 2025 WL 2423322 (Ky. App. Aug. 22, 2025). Opinion affirming by Eckerle, J.; Caldwell, J. and McNeill, J. (concur).

Appellant, Lowe's Home Centers, L.L.C. ("Lowe's"), sought reversal of the Montgomery Circuit Court's judgment affirming a final order of the Appellee, the Kentucky Claims Commission Board of Tax Appeals, upholding the assessment of Lowe's property by the Montgomery County Property Valuation Administrator (the "PVA"). After thorough review and careful consideration, the Court found that as a matter of procedure, the Board conflated the parties' burdens and misapplied the presumption of validity as to the PVA's assessment, failing to account for competent rebuttal evidence, and the circuit court failed to address that error. Further, and substantively, the Court held the Board's ultimate decision to uphold the assessment was based upon an incorrect standard and was not supported by substantial, compelling evidence. Both parties agreed that the PVA's continued use of 2008 values of the then-brand-new building for 2020 assessments over a decade later was improper. The Court further determined that the Board's rejection of Lowe's evidence of comparable sale values, and its uncritical adoption of the PVA's evidence of hypothetical leased values without any adjustments were not based upon competent or substantial evidence. Rather, because the PVA's expert relied on inapplicable and inaccurate methodologies and assumptions, and Lowe's expert based her opinions on true comparables in the open free market as Kentucky law requires, the Court concluded the evidence compelled a finding in Lowe's favor. Hence, the Court reversed and remanded with directions for the Board to adopt the assessment valuation supported by Lowe's expert.

XVII. QUALIFIED OFFICIAL IMMUNITY

Estate of Blevins v. Howe, 2024-CA-1100-MR, 2025 WL 2809420 (Ky. App. Oct. 3, 2025). Opinion affirming by Easton, J; Caldwell, J. and Combs, J. (concur).

This was an appeal of an order granting summary judgment to the Appellees based on qualified official immunity. The underlying action stemmed from a truck collision on a two-lane roadway. Appellants argued that Appellees, who are individual employees of the Transportation Cabinet, should have repaired the roadway before the collision. The question was whether the Appellees' duties involving the maintenance and repair of this roadway were discretionary or ministerial. The circuit court dismissed the claims against the Appellees ruling that qualified official immunity applied. The circuit court held the employees had to use their discretion in prioritizing the funds available for various repairs in roadways, thereby making their duties of repairing the road discretionary in nature. The Court ruled the employees were acting in a discretionary manner entitling them to qualified official immunity. It was undisputed that Appellees were acting within the scope of their professional authority, and there is no allegation or evidence they acted in bad faith. Discretion is involved when officials look at all the repairs necessary for the roadways in their district, prioritizing which projects need the most immediate attention while keeping budgetary constraints in mind. The Appellants had also brought a claim against the Transportation Cabinet. The agency itself has a ministerial duty to maintain the roadways for which it may be held liable through the Board of Claims process, but any failure of the agency to perform its ministerial duty does not necessarily support an action against individual employees who must exercise discretion when carrying out the agency's budgetary decisions. The Court affirmed the circuit court.

XVIII. UNIFORM DURABLE POWER OF ATTORNEY ACT

Reagan v. Capital One Financial Corporation, 2024-CA-1377-MR, 2025 WL 2551805 (Ky. App. Sept. 5, 2025). Opinion affirming by Combs, J.; Easton, J. and Lambert, J. (concur).

This case presented an issue of first impression arising from the Uniform Durable Power of Attorney Act, KRS Chapter 457. It arose from a dispute as to how to construe the Act in light of the role of an institution to ascertain the proper identification of a putative power of attorney (POA) who presents such an instrument. The appellant appointed her two grandsons as her agents and granted them each a POA. One of them, Robert, acting in her name, corresponded with Capitol One with whom Ms. Reagan had a credit card account. He presented his POA and demanded that it be recognized and honored within seven business days under pain of liability by the bank for attorney's fees and costs in enforcing its acceptance. The bank responded and demanded confirmation of the following information from Robert: date of birth, address, Social Security number or tax ID, and a government-issued photo ID (*e.g.,* a copy of a driver's license). Robert viewed that request as a rejection by the bank. He finally submitted a poor, illegible copy of his photo ID. The bank again requested better identification. Robert then filed suit against the bank "rather than simply providing basic details to confirm his identity." The bank emphasized its duty to identify its customers and their duly appointed agents for the sake of their security. The trial court granted summary judgment in favor of the bank. Robert then filed this appeal. The Court affirmed entry of summary judgment in favor of the bank. The Kentucky statute specifically defers to "any other law applicable to financial institutions." That law is the Bank Secrecy Act (later confirmed by the Patriot Act) that requires the furnishing of the very same information demanded by Capitol One in this case to ascertain the identity of its customers and their purported agents.

XIX. WRIT OF *MANDAMUS* AND PROHIBITION

Kisenda v. Summe, 2026-CA-0023-OA, 2026 WL 1449690 (Ky. App. May 22, 2026). Opinion and order denying petition for writ of *mandamus* and prohibition by Eckerle, J.; Acree, J. (concurs) and Combs, J. (dissents and files separate opinion).

Kisenda, by counsel, petitioned for a writ of *mandamus* and prohibition to prevent retrial following a mistrial and to mandate an order dismissing the case with prejudice. Kisenda asserts that a retrial will violate his right to protection from double jeopardy. Kisenda was pulled over for a traffic stop. When he refused to follow the officers' requests, the officers tried to remove Kisenda from the vehicle. Kisenda fought with the officers, kicking one in the groin. Kisenda was charged with third-degree assault (police officer) and obstructing governmental operations. At trial, the officer that was kicked, Specialist Douglas Ullrich, was cross-examined by Kisenda's counsel. When asking how long Ullrich has worked with the Covington Police Department, counsel made the statement "[s]o in that time, you have had 4 different civil lawsuits filed against you." After the Commonwealth's objection and a lengthy hearing outside the jury's presence, the trial court declared a mistrial. Kisenda then filed a motion to dismiss the case claiming that a retrial would violate double jeopardy. The Supreme Court has held that "although double jeopardy is an appropriate subject for a writ of prohibition, it is not mandatory that it be addressed in that context." *Sneed v. Burress*, 500 S.W.3d 791, 793 (Ky. 2016). It is well-settled that the Court of Appeals may assess directly the trial court's declaration of a mistrial and affirm the lower court's judgment on any ground that is supported by the record. *Wells v. Commonwealth*, 512 S.W.3d 720 (Ky. 2017). The Court of Appeals found that counsel's statement was improper, inadmissible, and prejudicial under the Kentucky Rules of Evidence. Additionally, another factor in favor of finding that mistrial was proper is that the statement was unilaterally made by defense counsel. The Court denied the writ. Judge Combs dissented and would have granted the writ.

XX. WRIT OF PROHIBITION

A. *Brinker v. Molloy*, 2025-CA-1139-OA, 729 S.W.3d 799 (Ky. App. 2026). Opinion and order granting petition for writ of prohibition by Easton, J.; Thompson, C.J. and L. Jones, J. (concur).

Brinker was a beneficiary and the trustee of the Brinker Family Trust. Following a complicated procedural history before both the district and circuit courts, the Beneficiaries filed a motion for summary judgment in the circuit court for their numerous claims of abuse and fraud by Brinker as trustee. Brinker responded by arguing, in part, that the district court had proper jurisdiction over all claims. In the context of an appeal, the circuit court granted summary judgment in favor of the Beneficiaries and scheduled a trial for damages. Brinker filed this original action with the Court of Appeals seeking a writ of prohibition based on the circuit court's lack of jurisdiction to determine the claims and damages. Brinker argued that, because no party filed a petition in the circuit court within 20 days of Beneficiaries' petition in district court, the circuit court is acting outside of its jurisdiction. The Beneficiaries filed a petition with the district court and, only after obtaining an unfavorable result, appealed to the circuit court. The circuit court then tried to remand the case only for an accounting and retain the rest of the case. Further confusion arose because the appeal never became final, and the district court continued to rule on various motions which it had no jurisdiction to do while an appeal was pending. To act in accordance with the provisions of the Uniform Trust Code and specifically KRS 386B.2-030(2), jurisdiction remains exclusively with the district court unless a party files a petition with the circuit court within 20 days of when the petition is filed with the district court. Thus, the district court here obtained exclusive jurisdiction over all claims, subject to an appeal after the claims are properly addressed. The circuit court should have remanded the entire action to the district court. The Court granted Brinker's writ of prohibition and instructed the circuit court to remand the entire case to the district court to resolve all claims. Only after those proceedings would review by appeal be proper.

B. *Flynn v. Vanmeter*, 2025-CA-1510-OA, 2026 WL 627763 (Ky. App. Mar. 6, 2026). Opinion and order granting petition for writ of prohibition by A. Jones, J.; Eckerle, J. and L. Jones, J. (concur).

Kailan Flynn filed a complaint alleging Arthur Patrick St. George physically restrained her and engaged in unwanted sexual contact while she was at work at the Lexington Country Club. After the complaint was filed, a story was run in the *Lexington Herald-Leader* (LHL). Flynn claimed the article caused her additional stress and anxiety. In Flynn's deposition, she stated that she did not contact anyone at LHL. When asked if her attorney contacted LHL, she claimed attorney-client privilege. St. George moved to compel a deposition of Flynn's attorney, Hon. Michael Cox. The circuit court granted the motion to compel Cox's deposition after St. George showed there was no other way to obtain information regarding whether Cox told LHL of the complaint or caused LHL to learn of it. Flynn moved for a writ of prohibition asking the Court to enter an order requiring Hon. Judge Vanmeter to vacate an order compelling Cox's deposition. The Court found that any alleged communication between Cox and LHL would not be privileged; however, compelling the deposition of opposing counsel is an extraordinary measure that poses a substantial risk to the attorney-client relationship, risks counsel's disqualification, and may improperly convert an advocate into a witness. *See McMurry v. Eckert*, 833 S.W.2d 828, 830-31 (Ky. 1992). The Court examined the third *McMurry* element that requires that the information sought be crucial to the preparation of the case. Crucial is different than relevant and helpful. The Court explained that the public availability of the information in the complaint renders the source of its discovery largely irrelevant. Reviewing the record, the Court could not conclude that any information Cox may possess regarding contact with LHL is critical to St. George's defense. The writ of prohibition was granted.