PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
AUGUST 1, 2023 to AUGUST 31, 2023

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I. ADMINISTRATIVE LAW

A. ***MARC HARDIN v. THE JEFFERSON COUNTY BOARD OF EDUCATION D/B/A JEFFERSON COUNTY PUBLIC SCHOOLS, ET AL.***

2020-CA-1316-MR 8/04/2023 2023 WL 4982129
Opinion by LAMBERT; CALDWELL, J. (CONCURS) AND COMBS, J. (CONCURS)

Appellant was demoted from the position of assistant principal to teacher based on the recommendation of Appellant's school principal. This decision was upheld by the Board of Jefferson County Public Schools (JCPS), and Appellant filed suit arguing his demotion failed to comply with the procedural protections afforded to school administrators by Kentucky Revised Statute (KRS) 161.765. Appellant also asserted claims of age discrimination and that JCPS failed to comply with its internal evaluation procedures during the demotion process. JCPS sought a dismissal arguing that Appellant served as an administrator in another school district, and as a result, he was not afforded the protections of KRS 161.765 because it required his service as administrator be for at least three years with JCPS. The Jefferson Circuit Court dismissed the complaint, and Appellant appealed which resulted in a reversal rendered in *Hardin v. Jefferson Cnty. Bd. of Educ.*, 558 S.W.3d 1, 4 (Ky. App. 2018) wherein the Court of Appeals held that the statute did not require the service as administrator to occur within the same school district for the three-year period. The decision additionally held the age discrimination claim was erroneously dismissed without "provid[ing] any legal analysis" because Appellant had "adequately stated a claim for age discrimination . . . ." Lastly, the decision reasoned that, rather than dismissing with prejudice, the circuit court should have stayed Appellant's claims relating to the alleged improper use of internal procedures to allow him an opportunity to exhaust his remedies with the State Evaluation Appeals Panel (SEAP). Upon remand from appeal, the circuit court allowed Appellant to amend his complaint to add SEAP. JCPS and SEAP both filed for dismissal. Among their arguments in support was the asserted basis that SEAP's decision was not subject to judicial review. The motion was granted with no discussion regarding the Court's holding in *Hardin*, 558 S.W.3d 1, and this appeal followed.

On appeal, JCPS and SEAP argued that two unpublished decisions in *Travis v. State Evaluation Appeals Panel*, No. 2017-CA-001018-MR, 2019 WL 2068539 (Ky. App. May 10, 2019) and *Geron v. Jefferson Cnty. Board of Education*, No. 2017-CA-000540-MR, 2018 WL 8262575 (Ky. App. Aug. 31, 2018), were rendered after *Hardin*, 558 S.W.3d 1 which provided a basis for the lower court to depart from the holding. The Court of Appeals disagreed and reversed the trial court's dismissal of Appellant's KRS 161.765 and age discrimination claims. In its decision, the Court discussed general principles of the law of the case doctrine which provides that "a court addressing later phases of a lawsuit should not reopen questions decided by that court or by a higher court during earlier phases

of the litigation." The Court reasoned that *Travis and Geron* did not constitute such an exception because unpublished cases "cannot constitute a change in the law" due to their non-binding status. Furthermore, those decisions were determined to not conflict with the rationale in *Hardin*, 558 S.W.3d 1, and the Court determined nothing in the underlying facts, including the inclusion of SEAP as a party to the litigation, changed the facts between its decision in *Hardin*, 558 S.W.3d 1 and first remand back to the circuit court. However, the Court affirmed the trial court's dismissal of Appellant's request for judicial review of SEAP's decision under KRS Chapter 13B, the statute governing administrative hearings, which was a claim that was not addressed on the merits in *Hardin*, 558 S.W. 3d 1. Citing *Travis*, 2019 WL 2068539, at *3, and *Geron*, 2018 WL 8262575, at *4, as persuasive, the Court determined that SEAP reviews did not involve "a formal adjudication of a teacher's legal rights, duties, privileges, or immunities" and did not provide "for a hearing officer, the presentation or cross-examination of witnesses or any of the traditional hallmarks of an administrative hearing." "SEAP is not empowered to reinstate a teacher to a prior position or provide any other remedy apart from setting aside a defective evaluation." *Geron*, 2018 WL 8262575, at *4. Thus, KRS 13B was determined to be inapplicable.

II. CRIMINAL LAW

A. ***JOHN BRANDON LAMOTTE v. COMMONWEALTH OF KENTUCKY***

2019-CA-0559-MR 8/04/2023 2023 WL 4982156
2020-CA-1486-MR

Opinion by ACREE, GLENN E.; McNEILL, J. (DISSENTS AND FILES SEPARATE OPINION) AND THOMPSON, C.J. (CONCURS)

The Commonwealth charged Brandon Lamotte with first-degree assault for attacking Kate Sanders. A jury convicted Lamotte of first-degree assault, which requires, among other things, a "serious physical injury to another person." Kentucky Revised Statutes (KRS) 508.010(1)(b). KRS 500.080(15) defines a "serious physical injury" as a "physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ." KRS 500.080(15). Lamotte appealed his conviction, arguing the Commonwealth failed to produce evidence Sanders suffered from a serious physical injury. Sanders testified that Lamotte stabbed her on the right side of her body, and that she had cuts around her neck and around her hip—none of which were actively bleeding when first responders arrived at the scene. Her medical records indicated no sutures were necessary to close any of her wounds and none of her injuries appeared to be life threatening.

The Court of Appeals reversed the conviction. The Court distinguished the case from *Brown v. Commonwealth* which held it would not be unreasonable to find a serious physical injury where, "[a]s a result of the stabbing," the victim "suffered a punctured lung, creating a hole in the lung and causing a pneumothorax . . . ." 553 S.W.3d 826, 831 (Ky. 2018). In the instant case, the Commonwealth presented evidence of external injuries and pneumothorax but failed to present any evidence that the first caused the second, electing to rely instead on the logical fallacy of *post hoc, ergo propter hoc*—that because effect A happened after alleged cause B, B caused A. The fallacy of such logic, the Court reasoned, is revealed by medical proof in this case that the victim's thoracic pleura (the

membrane encapsuling her lungs, heart, and major parts of her circulatory system) was never penetrated, that the lung did not collapse until two days later after the attack, and that the victim had a history of chronic pneumothorax. Given all the evidence, the Court held it was clearly unreasonable for the jury to have found the victim suffered serious physical injury as the statute and case law defines it because there was no evidence that external injuries caused a collapsed lung, only evidence that it did not. *See Simmons v. Commonwealth*, 576 S.W.2d 253, 254–55 (Ky. App. 1978) (when considering a directed verdict motion "the trial judge has been given an opportunity to pass on the sufficiency of all of the evidence . . . ."). Because the Court of Appeals reversed the conviction, there was no need to review Lamotte's second appeal challenging the denial of his Kentucky Rule of Civil Procedure 60.02 motion based on the victim's frequent public admissions she falsely accused Lamotte. Judge J. Christopher McNeill dissented and filed a separate opinion stating the jury's verdict was not clearly unreasonable in light of the evidence.

B. ***JEFFREY ALLEN KAY v. COMMONWEALTH OF KENTUCKY and HEATHER ASHLEY KOST v. COMMONWEALTH OF KENTUCKY***

2022-CA-0870-MR 8/04/2023 2023 WL 4982150
2022-CA-0871-MR
Opinion by KAREM, ANNETTE; CALDWELL, J. (CONCURS) AND COMBS, J. (CONCURS)

These appeals were taken from the denial of a motion to suppress evidence recovered in a traffic stop. A state trooper pulled over an RV that was having trouble staying within its lane. After he and another trooper separately questioned the driver and passenger, who gave differing accounts of their travel itinerary, the officers searched the RV and recovered four pounds of marijuana. The trial court held that the initial stop was supported by probable cause based on the trooper's testimony that the RV was veering over the center line and the fog line. The police video appeared, however, to show the RV crossing only the fog line. On appeal, the Court of Appeals held that the trial court was entitled to rely on the trooper's testimony; that the video was only activated after the trooper had followed the RV for over a mile; and that the driver himself confirmed to the trooper that he was having difficulty keeping the vehicle on course. The Court further held that the stop was not impermissibly extended in violation of *Rodriguez v. United States* 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015) because the officers had a reasonable and articulable suspicion that criminal activity was afoot based on the driver's uncontrollable nervousness and shaking; the inconsistency between the driver and the passenger's stories of where they were traveling from; the driver's failure to divulge they were coming from Colorado, a "source state" for marijuana; and the driver's admission that he had a small amount of marijuana. The Court held that questioning the driver and passenger about their travel itinerary fell well within the mission of a traffic stop under state and federal precedent and did not unreasonably extend the stop.

C. ***DAVID PONS v. COMMONWEALTH OF KENTUCKY***

2021-CA-1392-MR 8/18/2023 2023 WL 5312175
Opinion by JONES, ALLISON; ACREE, J. (CONCURS) AND DIXON, J. (CONCURS)

In a direct appeal from Appellant's convictions for first-degree manslaughter and first-degree wanton endangerment in a shooting death, the Court of Appeals affirmed the trial court's judgment. The Court considered and rejected Appellant's arguments that (1) the trial court erroneously permitted the

Commonwealth to play an "annotated" version of surveillance video footage which showed colored ovals around Appellant and his victim during the shooting, and (2) the trial court erroneously failed to grant his motion for directed verdict on the count of wanton endangerment.

With regard to the first issue, Appellant argued that the trial court should have disallowed the annotated video because it failed to place a colored oval around a third party, Appellant's wife, who was also present at the scene. However, the Court agreed with the trial court that the colored ovals were helpful in assisting the jury to understand the movements of the individuals on the screen. Furthermore, the colored ovals around Appellant and his victim helped differentiate Appellant's wife as well, because she was the only person without such an oval. Because this issue was not properly preserved, the Court determined that there was no manifest injustice requiring reversal.

In his second issue, Appellant argued the trial court should have granted a directed verdict for his wanton endangerment count because Appellant shot and killed his intended target, the person he claimed was threatening to kill him. However, the evidence showed that Appellant's wife was present and in the vicinity of the victim when Appellant fired his rifle. Quoting *Hall v. Commonwealth*, 468 S.W.3d 814, 828-29 (Ky. 2015), the Court of Appeals held that "Firing a weapon in the immediate vicinity of others is the prototype of first-degree wanton endangerment." Accordingly, the trial court did not err in denying Appellant's directed verdict motion.

D. ***COMMONWEALTH OF KENTUCKY v. CHRISTOPHER GAGE BLACKFORD***

2022-CA-0985-DG 8/18/2023 2023 WL 5311838

Opinion by GOODWINE, PAMELA R.; TAYLOR, J. (CONCURS) AND THOMPSON, C.J. (CONCURS)

The Commonwealth of Kentucky appealed a judgment of the Jefferson Circuit Court affirming a judgment of the Jefferson District Court. Blackford was charged with speeding 26 miles per hour or more over the speed limit and reckless driving. Blackford's counsel reached a settlement agreement with an assistant Jefferson County attorney. The parties agreed Blackford would plead guilty to the speeding charge in exchange for dismissal of the reckless driving charge. When the district court heard Blackford's case, the assistant county attorney assigned to the case was not present. Blackford's counsel asked the court to amend the speeding charge to 25 miles per hour over the posted speed limit. The district court agreed and allowed him to plead guilty to the lesser charge. The district court denied the county attorney's motion to vacate or set aside the final judgment. The Commonwealth appealed as a matter of right to the Jefferson Circuit Court, and the circuit court affirmed the judgment.

The Court of Appeals granted discretionary review. On appeal, the Commonwealth argued the Jefferson Circuit Court erred in affirming the judgment because the Jefferson District Court engaged in illegal *ex parte* communications with Blackford's counsel; lacked the authority to amend the speeding offense; violated the code of judicial conduct; and abused its discretion in denying the county attorney's motion to vacate or set aside the judgment. The Court determined that the Jefferson District Court engaged in illegal *ex parte* proceedings with Blackford's counsel and violated the Code of Judicial Conduct. Blackford's counsel was held to have violated the Kentucky Code of Professional Conduct. Additionally, the Court held that the district court lacked the authority to amend the speeding offense without the assistant county attorney's consent, and the district court erred in denying the county attorney's motion to alter, amend, vacate, or set aside the judgment. For these

reasons, the Jefferson Circuit Court erred in affirming the district court's judgment. This Court reversed the judgment of the Jefferson Circuit Court. It remanded with instructions to enter a new order reversing the judgment of the Jefferson District Court and to instruct the district court to enter a judgment in accordance with the original settlement agreement reached by the assistant county attorney and Blackford's counsel.

E. ***ERIN HELM v. COMMONWEALTH OF KENTUCKY***

2022-CA-1232-MR 8/25/2023 2023 WL 5491267
Opinion by JONES, ALLISON; CALDWELL, J. (CONCURS) AND TAYLOR, J. (CONCURS)

In a direct appeal from Appellant's twelve-month alternate sentence after she absconded from pretrial diversion, the Court of Appeals affirmed the Hardin Circuit Court's judgment. Appellant argued that the trial court no longer had the authority to impose a sanction because the diversionary period had expired while she had absconded. Appellant contended that the only action the trial court was authorized to take was to enter a final disposition of the charges as dismissed-diverted, because the Commonwealth had not moved to void diversion prior to the expiration of the diversionary period. The Court of Appeals disagreed with Appellant's argument, noting two important points: (1) the trial court did not void her diversion, making the line of cases regarding the voiding of diversion inapplicable; and (2) the trial court issued a bench warrant for her arrest after she had absconded, which tolled the diversionary period. The Court agreed with the trial court that KRS 533.254(1) applies the provisions of KRS 533.020 regarding probation to pretrial diversion "in so far as possible." KRS 533.020(4) specifically states that a pending warrant will prevent the automatic final discharge of probation. Here, given the General Assembly's explicit directive to do so in KRS 533.254(1), the Court held that KRS 533.020(4) prevents the automatic discharge of diversion due to a pending warrant as well.

III. CIVIL PROCEDURE

A. ***W.R.G v. K.C.***

2022-CA-1319-ME 8/04/2023 2023 WL 4982144
Opinion by GOODWINE, PAMELA R.; DIXON, J. (CONCURS) AND KAREM, J. (CONCURS)

The Court of Appeals entered an opinion superseding its prior decision rendered on July 28, 2023, which was subsequently withdraw. Father challenged the Caldwell Circuit Court's judgment granting Stepmother's petition to adopt his biological minor child. Although Father filed a *pro se* answer to the petition, he did not otherwise participate in the proceedings below. The Court of Appeals reviewed for palpable error and vacated the judgment, remanding the matter for a new hearing because Father was not served with any document requiring service including the trial order. Kentucky Rule of Civil Procedure (CR) 5.02(1) defines service as complete upon mailing "unless the serving party learns or has reason to know that it did not reach the person to be served." Stepmother's counsel admitted all documents he mailed to Father had been returned as undeliverable. The trial order was also returned to the circuit clerk marked as undeliverable. Despite Father's obvious lack of notice, the circuit court proceeded with the hearing because the order was mailed to his last known address. The Court of Appeals held, at the point mail intended for Father was returned, counsel and the circuit court knew it

did not reach him under CR 5.02(1). Without service of the trial order, Father did not have notice of the final hearing which amounted to a violation of his due process rights requiring a new hearing on the petition.

IV. DOMESTIC VIOLENCE

A. ***TIMOTHY LAZAR v. LINDA LAZAR (NOW OUSLEY)***

2023-CA-1316-ME 8/25/2023 2023 WL 5491279
Opinion by JONES, ALLISON; EASTON, J. (CONCURS) AND LAMBERT, J. (CONCURS)

Appellant directly appealed from the Floyd Family Court's issuance of a domestic violence order (DVO) issued against him. Appellant argued that the evidence did not support entry of the DVO, and that principles of laches, waiver, *res judicata*, and election of remedies otherwise barred it. The Court of Appeals disagreed with Appellant's arguments and affirmed. First, despite some trivial inconsistencies, the family court was entitled to consider the testimony of Appellee as substantial evidence to support that domestic violence had occurred and could occur again, consistent with Kentucky Revised Statute 403.740(1). Second, laches did not apply in this situation because there was no unreasonable delay in seeking relief. Although the incident of domestic violence had occurred eight months previously, Appellant repeatedly drove his vehicle to or near Appellee's home, despite having no legitimate reason for being there, and he did so as recently as the week before the evidentiary hearing in this case. Third, the Court held that the mutual restraining order and no contact order (MRO) that the family court issued as part of the parties' divorce proceeding did not preclude issuance of the DVO. The MRO was not issued pursuant to the DVO statutes but was only predicated upon the parties' mutual agreement. Furthermore, the family court found the DVO to be justified in the face of Appellant's continuing conduct. The Court then held that the remaining arguments posited by Appellant warranted no consideration.

V. FAMILY LAW

A. ***JAMIE ALAN DAY v. ANGELA FIORITA DAY***

2022-CA-1250-MR 8/04/2023 2023 WL 4982565
Opinion by CETRULO, SUSANNE M.; ECKERLE, J. (CONCURS) AND GOODWINE, J. (CONCURS)

This is an appeal from a decision of the McCracken Family Court, which declined to exercise jurisdiction over a timesharing matter pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The couple had divorced in Kentucky and agreed, by an order approved by the family court, that any future issues would be determined by the McCracken Family Court. However, both parents and the child had relocated to Florida two years prior to this latest motion to modify timesharing. The Court of Appeals affirmed in its opinion discussing the difference between subject matter jurisdiction and particular case jurisdiction, as well as the effect of a forum selection agreement upon the court's authority. Holding that such an agreement cannot deprive a court of its discretion to accept or deny continuing jurisdiction under the UCCJEA, the Court confirmed the family court's decision to decline to exercise its jurisdiction. Under these circumstances, where all parties

had lived in Florida for two years, the forum selection clause was only one of the facts to be determined by a court under Kentucky Revised Statute 403.834.

VI. PROPERTY LAW

A. ***CYPRESS FLATS LAND COMPANY, LLC., ET AL. v. RIVER VIEW COAL, LLC.***

2022-CA-0095-MR 8/04/2023 2023 WL 4982065
2022-CA-0145-MR

Opinion by ECKERLE, AUDRA; CALDWELL, J. (CONCUS) AND DIXON, J. (CONCURS)

The seminal issue of this appeal was whether a coal lessee is liable for trespass or unjust enrichment when it is conducting lawful activities including the injection of coal slurry into mine voids under surface properties where no mining is actively occurring, but coal remains to be harvested. A jury considering the issue answered in the negative.

River View Coal, LLC ("River View") leased mineral rights to coal located underneath numerous contiguous surface properties, including Appellants' ("Cypress Flats") properties. There are three seams of coal under the properties, one of which had never been mined. The other two seams were mined using the room-and-pillar method, whereby rooms or voids are left after the coal is removed and pillars of coal remain to support the surface properties. During the mining process the coal must be cleaned, and one of the byproducts of the cleaning process is coal slurry, which contains coal fines, rocks, water, and other items. The coal slurry is a valuable product, and it is stored in various ways, including surface impoundments and underground impoundments. River View sought and obtained permits to inject coal slurry into the mine voids under certain of Cypress Flats' properties. They also negotiated and paid for surface easements before injecting the coal slurry. River View injected the slurry for a few years before Cypress Flats, through counsel, sent a cease-and-desist letter. River View continued injecting slurry pursuant to its permit and easements, eventually ceasing for reasons unrelated to the cease-and-desist letter.

A resulting complaint was filed in Union Circuit Court, seeking damages for trespass and unjust enrichment. The parties agreed that the principal case regarding the ownership and use of mine voids was *Middleton v. Harlan-Wallins Coal Corp*., 252 Ky. 29, 66 S.W.2d 30 (1933). There, a coal owner who possessed mineral estates under a large boundary of surface properties was transporting in the tunnels and voids of property coal mined from under other surface properties. The Kentucky Supreme Court held no claim for trespass could be sustained by the surface owners because "so long as there is any of the immediate mineral in place, the owner of it, or the one who has the right to extract it, may use the tunnels and other necessary subterranean passages and openings, not only for the removal of the mineral taken therefrom and embedded under the same surface rights, but also for all other lawful purposes so long as it is necessary to maintain such openings to extract and remove the mineral under the particular surface[.]" *Middleton*, 66 S.W.2d at 31. The jury in the instant case was presented with the legal test from *Middleton* and made factual findings consistent with River View having the right to use the tunnels and voids.

On appeal, Cypress Flats principally argued the trial court erred by not directing a verdict or by erroneously instructing the jury because Cypress Flats claimed that an active mining requirement should be read into *Middleton*. The Court of Appeals held that nothing in *Middleton* suggested such

an outcome, and Kentucky law regarding mineral estates in coal granted such owners and lessees strong rights to access and extract the coal including the right to use the voids and tunnels for lawful purposes. The Court stated *Middleton* suggested the opposite of what Cypress Flats proffered – that is the surface owner's rights are *not affected at all* by the mineral owner using the tunnels and voids. Accordingly, as the evidence was that there was coal remaining under the surface properties and the tunnels and voids were necessary to extract the same, the Court deemed that no error occurred. The remaining evidentiary claims were held to have either had no basis in fact or were harmless in light of the jury's finding in favor of River View on the principal issue.

B. ***ALETHA CARROLL COMBS v. KAREN RENEER, ET AL.***

2022-CA-0362-MR 8/18/2023 2023 WL 5312167
Opinion by EASTON, KELLY MARK; ACREE, J. (CONCURS) AND JONES, J. (CONCURS)

Appellant challenged an order of the Grayson Circuit Court approving a master commissioner's sale of jointly owned real property. Appellant and Appellee shared a joint tenancy with right of survivorship of a home surrounded by five acres. Appellant filed for a partition sale pursuant Kentucky Revised Statute 389A.030 and requested the circuit court grant her share of the proceeds. The circuit court referred the property to the master commissioner for a partition sale later held in July 2021 at which Appellee was the only bidder and purchased the property with a bid of $1.00. Appellant motioned the circuit court to set aside the sale as unconscionable and presume fraud. After an unsuccessful resolution at an ordered mediation, the circuit court denied the motion and confirmed the sale.

Quoting *U.S. Bank National Association v. Courtyards University of Kentucky*, 594 S.W.3d 205, 209 (Ky. App. 2019), the Court of Appeals affirmed and noted "'that mere inadequacy of price [was] an insufficient ground for setting aside a judicial sale.'" The Court also cited *Gross v. Gross*, 350 S.W.2d 470 (Ky. 1961), for analogous support which involved a successful bid in the amount of $500 for real property valued at $10,500.00 by an individual who already enjoyed a 5/7th ownership stake in the property. Additionally, the bidder in *Gross* had "provided for the prior owner" and made improvements to the property. Similarly, the underlying facts of this appeal demonstrated Appellant, as a joint owner, had resided at and possessed the property since 2012 and was solely responsible for daily maintenance. The Court further affirmed the refusal to presume fraud because it would be improper to "conjecture some collusion or other irregularity explaining the lack of another bid," and there was otherwise no evidence produced by Appellant demonstrating such.

VII. WILLS, TRUSTS, AND ESTATES

A. ***TYLER POPPLEWELL, ET AL. v. CONNIE CORNER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF THOMAS DUNBAR, A/K/A "SAM" DUNBAR***

2022-CA-0844-MR 8/04/2023 2023 WL 4982155
Opinion by KAREM, ANNETTE; DIXON, J. (CONCURS) AND GOODWINE, J. (CONCURS)
DISCRETIONARY REVIEW GRANTED 01/10/2024

Appellants appeal from the Russell Circuit Court's order dismissing Appellant Tyler Popplewell's complaint with prejudice for lack of standing. Appellant's complaint requested that the circuit court declare his great-uncle's will null and void and grant fraud damages. On appeal, Appellant argued

that the circuit court erred in ruling that he did not have standing to bring the claims asserted in his complaint and pointed out that Appellee Connie Corner's answer to his complaint contained no affirmative defenses. Instead, Appellee raised the lack of standing defense for the first time in a motion to dismiss for failure to state a claim under Kentucky Rule of Civil Procedure 12.02.

The Court of Appeals reversed and remanded for further proceedings. The Court first noted that the Kentucky Supreme Court has held that "lack of standing is a defense which must be timely raised or else will be deemed waived." *Harrison v. Leach*, 323 S.W.3d 702, 708 (Ky. 2010). The Court determined that because it was undisputed that the lack of standing defense was available to Appellee after Appellant filed his complaint, that Corner should have timely raised such defense in her answer. Thus, the Court held that the circuit court committed reversible error by determining that Appellant lacked standing to challenge the will.