PUBLISHED OPINIONS

KENTUCKY COURT OF APPEALS

DECEMBER 01, 2021 to DECEMBER 31, 2021

I. WORKERS' COMPENSATION

A. ***AIG V. DAOUD OUFAFA, ET AL.***

2020-CA-0942-WC, 2020-CA-0946-WC 12/10/2021 2021 WL 5856528

Opinion by ACREE, GLENN E.; CLAYTON, C.J. (CONCURS) AND LAMBERT, J. (DISSENTS AND DOES NOT FILE SEPARATE OPINION)

The Workers' Compensation ALJ applied factors articulated in *Ratliff v. Redmon*, 396 S.W.2d 320 (Ky. 1965), and concluded that there was no employee-employer relationship between an entity that leased a taxicab and dispatch and credit card processing services (Company) to its taxicab driver lessee (Claimant) based on a written agreement and a document acknowledging Claimant's status as an independent contractor. The Workers' Compensation Board ruled that the ALJ incorrectly concluded that Company was a taxicab leasing company rather than a taxicab company and that this "tainted the entirety of his analysis." The Board vacated the ALJ's finding that Claimant was an independent contractor and remanded for an amended opinion finding that Company was a taxicab company. The Board further ordered the ALJ to conduct a renewed analysis of the *Ratliff* factors focusing on the nature of the work Claimant performed in relation to the regular business of Company as a taxicab company when considering the control factor. The Court of Appeals reversed the Board and ordered reinstatement of the ALJ's opinion. Agreeing with the Board's identification of the Claimant's work in relation to the regular business of the employer as the dominant factor in the decision of whether the claimant is an employee, the Court noted that KRS 342.0011(34) defines "work" as "providing services to another in return for remuneration on a regular and sustained basis in a competitive economy[.]" There was no evidence that Claimant received any remuneration of any kind from Company. All of Claimant's remuneration was received directly from his customers in cash or indirectly after the Company processed Claimant's customers' credit card payments, a service Claimant paid the Company to perform. Furthermore, the Court agreed that the Company exercised no control over Claimant's day-to-day conduct. Claimant's lease payments were due without regard to whether he performed any work, and Claimant was free to not work at all. The Court noted that the amount of time Claimant himself chose to work was directly proportional to the risk he would suffer a workplace injury and reasoned that it was in keeping with the theory of risk spreading embodied in compensation that he should bear these associated risks of working.

II. DOMESTIC VIOLENCE

A. ***JUSTIN KYLE JOHNSTON V. CINDY PATRICIA JOHNSTON***

2020-CA-1441-ME 12/22/2021 2021 WL 6058551

Opinion by McNEILL, J. CHRISTOPHER; COMBS, J. (CONCURS) AND JONES, J. (CONCURS)

Appellant Justin Kyle Johnston appealed from the Hardin Family Court's entry of a domestic violence order granted on behalf of Appellee, Cindy Patricia Johnston's twelve-year-old minor child, who alleged that Appellant kissed her and tried to stick his tongue in her mouth. On appeal, Appellant argued that even if the incident occurred as the child alleged, this act, without more, would not constitute domestic violence. He also argued that without testimony from the child that she was fearful he would attempt to kiss her again or that he may harm her in the future, there was insufficient evidence for the family court to find that he placed the child in fear of imminent physical injury. The Court of Appeals affirmed, concluding that the act of an adult attempting to kiss a twelve-year-old child with his tongue is more than sufficient to create a concern in the child's mind that sexual abuse may occur in the future. The act put the child in fear that a kiss was going to lead to something worse. For a child of her age, this put her in imminent fear of bodily harm. In affirming the trial court, the Court considered the trial court's oral findings of fact, which were properly incorporated into its written order pursuant to *Smith v. McCoy*, No. 2021-SC-0050-DGE, --- S.W.3d ---, 2021 WL 3828565 (Ky. Aug. 26, 2021).

III. FAMILY LAW

A. ***LYNDSEY M. KING, ET AL. V. KARLA EVELYN GARDNER KING***

2020-CA-1624-MR, 2020-CA-1627-MR 12/10/2021 2021 WL 5856347

Opinion by CLAYTON, DENISE G.; COMBS, J. (CONCURS) AND L. THOMPSON, J. (CONCURS)

The widow of a deceased physician filed a declaratory judgment action against his children. She sought to invalidate a prenuptial agreement that she and her late husband signed a few minutes before their wedding ceremony. The trial court held that the agreement was void and invalid for lack of full disclosure of the extent and value of the parties' assets prior to executing the agreement. The trial court found that neither of the parties had done what they specifically attested to in the agreement and that, consequently, neither the husband nor the wife manifested faith in the integrity of the agreement, and neither party manifested the intention to respect the agreement. The Court of Appeals affirmed, finding as credible the wife's testimony that she was unaware of the full extent of her husband's financial holdings and statements evidencing that neither party took the agreement seriously. The Court rejected the argument that the facts of this case were sufficiently similar to those of *Lawson v. Loid,* 896 S.W.2d 1 (Ky. 1995) and *Copley v. Copley*, 2009-CA-001102-MR, 2010 WL 3447703, (Ky. App. Sept. 3, 2010), to compel a finding that agreement was valid. The Court stressed that each agreement must be reviewed on a case-by-case basis, that the party seeking to uphold the agreement bears the burden of proving full disclosure of assets at the time the agreement was executed, and that the standard of review remains whether the trial court's findings were supported by substantial evidence. The Court also upheld the admission of hearsay statements of the deceased to the appellee a few minutes before the wedding telling her to sign the agreement or they would not get married, that the agreement did not mean anything, and that his family wanted him to do it. The Court held that these statements were properly admitted under KRE 804(b)(3) as statements against interest by an unavailable declarant. Finally, the Court rejected the appellants' argument that a prenuptial agreement should not invalidated for

inadequate disclosure unless there is also evidence of deception, fraud, or material omission on the ground that it does not have the authority to add additional requirements to the legal standard established by our state's highest court.

B. ***L. G. A. V. W. R. O., ET AL.***

2021-CA-0585-ME, 2021-CA-0586-ME 12/22/2021 2021 WL 6058545

Opinion by CALDWELL, JACQUELINE M.; CETRULO, J. (CONCURS IN RESULT ONLY AND FILES SEPARATE OPINION) AND JONES, J. (DISSENTS AND FILES SEPARATE OPINION)

Appellant filed petitions to involuntarily terminate her children's fathers' parental rights pursuant to KRS 625.060(1)(b). The Cabinet had no prior history with any of the parents and had never filed either a petition for termination of parental rights nor a DNA petition. The trial court ordered the parties to file briefs regarding whether it had jurisdiction under these circumstances. The Cabinet argued that the trial court could not grant the petition to involuntarily terminate parental rights under KRS 625.090(1) unless it made three required findings by clear and convincing evidence, including a finding that the Cabinet has filed a petition with the court pursuant to KRS 620.180. The mother argued that there was a conflict between KRS 625.050(3), which allows parents to file petitions for involuntary termination of parental rights, and KRS 625.090(1)(b). She also argued that KRS 625.090(1)(b)'s requirement that the Cabinet file a petition unconstitutionally restrains her right to determine what is best for her child. The trial court dismised the mother's petitions, and she appealed. The Court of Appeals affirmed, concluding that the trial court could not grant the petitions for involuntary termination of parental rights because the mother could not show that the Cabinet had filed a petition as required by KRS 625.090(1)(b). The Court declined to address Appellant's constitutional challenge to KRS 625.060(1)(b) because she did not notify the Attorney General of her constitutional challenge as required by KRS 418.075(1).

Judge Cetrulo concurred in result only and filed a separate opinion stating that she did not believe the General Assembly intended to create a scenario in which parents who have cared for their child without Cabinet involvement are more restricted in protecting their child than parents who have been subject to Cabinet involvement and support.

Judge Jones dissented and filed a separate opinion stating that she believes KRS 625.090(1)(b) requires the Cabinet to file a petition for termination of parental rights in accordance with the requirements of KRS 620.180(2)(c) in cases where children have been committed to the Cabinet as dependent, neglected, or abused and placed in family foster homes.