

**PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
JANUARY 1, 2023 to JANUARY 31, 2023**

I. CRIMINAL LAW

A. RICHARD JUSTIN SPROUSE v. COMMONWEALTH OF KENTUCKY

[2021-CA-1258-MR](#)

01/13/2023

2023 WL 175418

Opinion by CALDWELL, JACQUELINE M.; CETRULO, J. (CONCURS) AND COMBS, J. (CONCURS)

Appellant appealed his conviction for failure to comply with the requirements of KRS 17.510(11) which governs the duties of sex offender registrants. Appellant entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) and preserved his right to appeal. On appeal, he argued that KRS 17.510(11) did not require registrants to take active steps to validate their addresses every ninety (90) days, but rather, placed the obligation on the Commonwealth. Unpersuaded, the Court of Appeals affirmed his conviction and held “that such an interpretation renders the entire registration system ineffectual if there is no requirement of compliance with verification on the part of the registrant.” For support, the Court pointed to related administrative regulations which “outlined therein a clear duty on the part of the registrant to cooperate in verifying his or her residence information.” In conclusion, the Court noted the statute was implemented to comply with the requirements of the federal Sexual Offender Registration and Notification Act.

B. BLAKE JEFFREYS v. COMMONWEALTH OF KENTUCKY

[2021-CA-0949-MR](#)

01/20/2023

2023 WL 324706

Opinion by McNEILL, J. CHRISTOPHER; DIXON, J. (CONCURS) AND LAMBERT, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 06/07/2023

Appellant pled guilty to one count of promoting human trafficking, and based on asserted indigency, requested the Jefferson Circuit Court waive implementation of a ten thousand dollar (\$10,000) human trafficking service fee required by KRS 529.130. The circuit court refused to waive the fee along with a ten dollar (\$10) monthly probation fee but agreed to waive all other costs, fines, and fees. Appellant argued on appeal that the circuit court erred by refusing to waive the \$10,000 fee and that KRS 529.130’s human trafficking service fee was unconstitutional. The Court of Appeals affirmed the circuit court. Citing *Commonwealth v. Moore*, 545 S.W.3d 848 (Ky. 2018), it held that the human trafficking service fee was not a fine and thus did not fall within KRS 534.030(4)’s general exemption of imposing fines for felonies on indigents. Due to its unpreserved status, the Court held that Appellant’s constitutional challenge did not demonstrate palpable error.

II. DOMESTIC VIOLENCE

A. **CHRISTINA HOLT TAYLOR v. LEIGH-ANN FITZPATRICK**

[2022-CA-0946-ME](#)

01/13/2023

2023 WL 175518

Opinion by CETRULO, SUSANNE M.; DIXON, J. (CONCURS) AND TAYLOR, J. (CONCURS)

This is an appeal from an Allen County Family Court ruling which extended an interpersonal protective order (IPO) for three more years on a finding of stalking by Appellant against the new girlfriend of Appellant's former husband. The Court of Appeals vacated the IPO as there was insufficient evidence of stalking as that is defined by the criminal statutes, and the trial court failed to make written findings to support the issuance of a protective order.

III. FAMILY LAW

A. **CABINET FOR HEALTH AND FAMILY SERVICES v. JEFFERSON COUNTY ATTORNEY'S OFFICE, ET AL.**

[2022-CA-0570-ME](#)

1/13/2023

2023 WL 175514

Opinion by CALDWELL, JACQUELINE M.; GOODWINE, J. (CONCURS) AND L. THOMPSON, C.J. (CONCURS)

This appeal concerned whether Appellant Cabinet for Health and Family Services could appeal from an order requiring it to pay expert witness fees to Appellee indigent parents in a dependency, neglect, and abuse (DNA) action. The parents brought their child to the hospital after the child reportedly rolled off the couch and hit his head. Medical caregivers reported suspected child abuse based on observed bruising around the child's ears, and four months later, the Cabinet filed a DNA petition. The parents requested the Jefferson Family Court grant expert funds on the basis that the child suffered from a medical condition that causes easy bruising, and since the Cabinet consulted with an expert before filing its petition, they were entitled to have an expert rebut the accusations. The family court granted funding and denied the Cabinet's subsequent motion to vacate.

The Court of Appeals affirmed the family court's order and held that these circumstances permitted an interlocutory appeal under the collateral order doctrine. It was determined that the family court's order satisfied the three factors of the doctrine in that it: 1) conclusively decided an important issue separate from the merits of the case; 2) would be effectively unreviewable after a final judgment due to the inability to recoup spent expert funds; and 3) involved a substantial public interest, based on the presence of a government agency and taxpayer funds, that would be imperiled absent an immediate appeal. The Court placed particular emphasis on the public interest prong in making its determination. It was held that the family court's grant of expert funding was not an abuse of discretion as the record sufficiently demonstrated the parents were indigent. Further, despite insufficiently identifying the type of expert sought in their pleadings, the parents sufficiently identified the type of expert needed at a hearing before the family court, and that witness was "reasonably necessary" because "medical evidence would be a significant factor in the determination of neglect or abuse." Lastly, due process "weigh[ed] in favor" of granting the funds because the matter involved a

“liberty interest in the custody” of Appellees’ child, and the Cabinet’s accusations manifested after consultation with an expert.

IV. TORTS

A. MICHAEL GONTERMAN, ET AL. v. WOOSTER MOTOR WAYS, INC., ET AL.

[2021-CA-1304-MR](#)

1/06/2023

2023 WL 125065

Opinion by THOMPSON, LARRY E.; DIXON, J. (CONCURS) AND LAMBERT, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 08/16/2023

The Court of Appeals reversed and remanded a grant of summary judgment in favor of Appellees. The trial court held that the Firefighter’s Rule, which prohibits emergency personnel from recovering for injuries sustained while performing their duties under certain circumstances, prohibited Appellant Michael Gonterman, a police officer, from recovering from Appellees. The Court of Appeals held that the Firefighter’s Rule did not apply because Appellees who allegedly caused his injuries were not the kind of people the rule was created to protect, namely landowners and occupiers who call first responders to respond to emergency situations. Here, Gonterman was hit by a truck on a public roadway while he was trying to remove loose dogs from the side of the road. The Court also held that the rule did not apply because Gonterman was not injured by the risk he was called to remedy. Gonterman was called to the scene of his injury to remove dogs from the road but was injured by the alleged negligent acts of two truck drivers who caused the accident which injured him.