PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
NOVEMBER 1, 2024 to NOVEMBER 30, 2024

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I. FAMILY LAW

A. ASHLEY NICOLE HARNEY (n/k/a McCONATHY) v. STUART AUSTIN HARNEY (Ky. App. 2024).

2022-CA-1202-MR 11/15/2024 2024 WL 4795987

Opinion Affirming in Part, Reversing in Part, and Remanding by TAYLOR, JUDGE; COMBS, J. (CONCURS) AND L. JONES, J. (CONCURS)

The parties have two children and a Decree of Dissolution, incorporating the Marital Settlement Agreement (MSA), was entered on July 22, 2015. At this time, the parties agreed to Ashley's being awarded sole custody of their children and Stuart (Austin) was ordered to pay child support of $422 per month to Ashley. Austin's child support was subsequently increased two more times. By order entered June 27, 2022, the family court granted Austin's motion to modify custody, and awarded the parties joint custody of their two children. Therein, the family court determined Austin had a child support arrearage of $2,346.45 but ordered that no interest shall accrue because no prior order included interest as part of the arrearage calculation, and the family court granted Austin's request to claim one of the children for the 2021 tax year.

Upon motion made by Ashley, the family court entered an order on September 20, 2022, denying to alter, amend, or vacate the 2021 child tax exemption decision, but did alter its order regarding the accrual of interest on the child support arrearage, determining Ashley was entitled to interest at the legal rate on each payment until paid in full. A hearing was subsequently held on competing motions to modify child support, and pursuant to the family court's December 7, 2022 Order, the County Attorney's Office determined Austin had a child support arrearage of $13,109.20, and the interest on the arrearage was $1,573.10. Both parties disagreed with the County Attorney's calculation, and by Order entered May 12, 2023, the family court amended its December 7, 2022, order to provide that "interest is to be awarded from May 1, 2015[,] to January 1, 2018[,]" and that for the same period, Austin owed interest of $8,570.35. This appeal followed.

Ashley, Appellant, first contends the family court erred by determining she was not entitled to prejudgement interest on all of Austin's, Appellee, child support arrearage, asserting the family court erroneously determined that she was only entitled to prejudgment interest on the arrearage that accrued from May 1, 2015, through January 1, 2018.

While it is established that interest generally begins to accrue once a child support payment becomes delinquent, whether to award interest on a child support arrearage is within the sound discretion of the family court. *Gibson v. Gibson,* 211 S.W.3d 601, 611 (Ky. App. 2006). The *Gibson* Court identified two factors for consideration when weighing the inquiry of requiring interest on a child support arrearage, including whether there was an attempt by the obligor to provide "any services to the children," and whether the obligor "made any attempt to substantially comply with the trial court's child support order. *Id.* This Court concluded the family court properly considered the applicable factors, and it was not an abuse of discretion to determine it would be inequitable to require Austin to pay interest on the unpaid child support arrearage that accrued after January 1, 2018, because the record reflects that Austin substantially complied with the child support order, satisfying the second *Gibson* factor.

Second, Ashley asserted the family court erred by not awarding her interest on attorney's fees that Austin was ordered to pay per the parties' MSA, stating KRS 360.010 entitles her to prejudgment interest at the statutory rate of eight percent. This Court concluded the family court erred by not ordering the award of attorney's fees would bear the applicable statutory interest at eight percent. Therefore, this Court reversed and remanded for the family court to calculate the interest owed on the attorney's fees.

Third, this Court affirmed the family court's ruling that Austin was entitled to receive a credit against his child support arrearage, which represented his overpayment of childcare costs. The family court's credit to Austin for child support arrearage is not tantamount to a modification of child support, and is only a reduction, as this Court previously explained in *Olson v. Olson*, 108 S.W.3d 650 (Ky. App. 2003). Finally, this Court found no error in the family court's award to Austin the child tax exemption for the 2021 tax year and affirmed its decision thereto.

B. ***C.M., ET AL. v. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. (Ky. App. 2024).***

2023-CA-1459-ME 2023-CA-1460-ME 2023-CA-1461-ME 2023-CA-1462-ME 2023-CA-1463-ME 2023-CA-1464-ME	11/08/2024	2024 WL 4311365

2023-CA-1465-ME
2023-CA-1466-ME

Opinion Affirming by GOODWINE, JUDGE; ECKERLE, J. (CONCURS) AND MCNEILL, J. (CONCURS)

This Court granted a motion to publish this opinion consisting of eight appeals consolidated. Mother and Father (Appellants) appealed the family court's orders committing the four minor children to the Cabinet's custody. This Court affirmed the family court's rulings.

First, Appellants argued the family court's findings of neglect against Mother were clearly erroneous and not supported by substantial evidence. Appellants cited *K.H. v. Cabinet for Health and Family Services,* 358 S.W.3d 29, 32 (Ky. App. 2011), wherein the appellate court found that the cabinet was required to prove the mother's refusal to sign and abide by a prevention place exposed her children to a risk of harm from the father. However, this Court distinguished the present matter from *K.H.* in that many additional facts support the family court's finding of neglect against the Mother. Mother's failure to follow the prevention plan was not the sole reason for the family court's finding of neglect.

Second, Appellants argued the family court abused its discretion by declining to admit Snapchat photographs as evidence to impeach a witness's credibility. The Appellants' argument fails because the witness, S.D., lacked the necessary personal knowledge of the contents of the photographs to authenticate them. While S.D. observed the victim using the social media messaging platform one day during the relevant time period, S.D. was unable to recall the date on which she took the photographs, did not observe the contents of the messages where they were allegedly created, who sent the messages, who received the messages, or who was the account's owner. Without any identifying information, the family court could not confirm the messages were associated with the victim as alleged. This Court affirmed the family court's rulings.

II. CRIMINAL LAW

A. COMMONWEALTH v. SAMUEL GAMBREL (Ky. App. 2024).

2023-CA-0540-MR 11/08/2024 2024 WL 4714466

DISCRETIONARY REVIEW GRANTED 04/16/2025

Opinion Affirming in Part, Reversing in Part, and Remanding by A. JONES, JUDGE; CALDWELL, J. (CONCURS) AND CETRULO, J. (CONCURS)

In an interlocutory appeal by the Commonwealth stemming from the trial court's grant of the Appellee's motion to suppress evidence, the Court of Appeals affirmed in part, reversed in part, and remanded. The Appellee and two companions were sleeping in the Appellee's vehicle in a Walmart parking lot when police were dispatched to check on the welfare of the occupants. After the occupants were determined to be sober and not in any distress, the officers asked them for identification. One of the passengers had warrants for his arrest and upon stepping out of the vehicle, an officer observed a plastic bag of methamphetamine in plain view. Following a search of the vehicle, the Appellee was thereafter arrested and charged with several offenses, including first-degree trafficking in a controlled substance. The trial court subsequently granted the Appellee's motion to suppress evidence, finding that there was no reasonable articulable suspicion of criminal activity to justify the seizure of the occupants and the request for identification.

The Commonwealth presented two arguments in its interlocutory appeal. First, the Commonwealth argued the trial court erroneously determined that Appellee and his passengers were seized within the meaning of the Fourth Amendment of the United States Constitution and Section 10 of the Kentucky Constitution. Second, the Commonwealth argued the trial court erroneously determined that the attenuation doctrine did not apply as an exception to the exclusionary rule in this case.

The Court of Appeals affirmed the trial court on the first issue when it determined that a reasonable person in the Appellee's position would not believe he was free to leave, pursuant to *United States v. Mendenhall*, 446 U.S. 544 (1980). However, the Court reversed the trial court on the issue of attenuation. The circumstances of this incident, under the test in *Utah v. Strieff*, 579 U.S. 232 (2016), justified attenuation because the warrants for the Appellee's companion broke the causal link between the unlawful stop and the discovery of evidence. In reversing, the Court disagreed with the trial court that the police misconduct was flagrant, noting that police officers in Kentucky are permitted to ask for identification of vehicle passengers during a traffic stop under *Carlisle v. Commonwealth*, 601 S.W.3d 168 (Ky. 2020). At most, the officers in this case negligently conflated a welfare check with a traffic stop, a mistake which failed to rise to the level of flagrant police misconduct.

B. <u>COMMONWEALTH v. MALISSA CHAPMAN and COMMONWEALTH v. GARY CHAPMAN (Ky. App. 2024).</u>

2023-CA-1221-MR	11/15/2024	2024 WL 4795919
2023-CA-1448-MR	11/15/2024	

Opinion Reversing and Remanding by ECKERLE, JUDGE; GOODWIN, J. (CONCURS) AND CETRULO, J. (CONCURS)

In this consolidated appeal, the Commonwealth challenged Perry Circuit Court orders granting Appellees' motions to suppress evidence seized as a result of law

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

III. IMMUNITY

A. BAPTIST HEALTH MEDICAL GROUP, INC. and BAPTIST HEALTH MADISONVILLE, INC. v. JOHN MITCHELL FARMER, M.D. (Ky. App. 2024).

2023-CA-0809-MR 11/15/2024 2024 WL 4795915

Opinion Reversing and Remanding by ECKERLE, JUDGE; TAYLOR, J. (CONCURS) AND A. JONES, J. (CONCURS)

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

The initial underlying action was brought against Baptist Health by Dr. Farmer after completing his residency in the Baptist Health medical program in October 2020. Dr. Farmer began his one-year medical residency program with Baptist Health in June 2019. In November 2019, concerns about Dr. Farmer's behavior and whether he was working while under the influence of intoxicants were brought to the attention of the

Baptist Health's facility manager and the director of Baptist Health's residency program. While Dr. Farmer would not be subject to discipline as a physician resident, Baptist Health decided it would counsel Dr. Farmer in an attempt toward recovery and wellness. Because no proof existed as to whether Dr. Farmer was impaired at the relevant time and because disciplinary measures could have serious consequences for Dr. Farmer, Baptist Health ultimately decided to refer Dr. Farmer to the Kentucky Physician's Health Foundation ("the Foundation"), which identifies and evaluates impaired individuals for diagnosis, treatment, and advocacy, but does not punish or sanctions doctors. The Foundation conducted comprehensive testing and evaluations and made recommendations for Dr. Farmer's care. However, the Trial Court only allowed Baptist Health to inform the jury generally and in a conclusory fashion that Dr. Farmer's test results and information caused the Foundation to report Dr. Farmer to the Kentucky Board of Medical Licensure ("the Board"). Thus, the jury only knew that Baptist Health made a disciplinary referral of Dr. Farmer to the Board but did not know that it did so after a finding of significant impairment of Dr. Farmer that could cause injury to himself, patients, and the public.

Additionally, the Trial Court did not allow Baptist Health to present to the jury steps taken by the Board after conducting its own investigation, which included Dr. Farmer's consent to regular, long-term monitoring, allowing Dr. Farmer to substitute research electives for patient care to help him complete his residency on time, continue to receive compensation, and be free of suspension or discipline. Ultimately, Dr. Farmer returned to patient care in February 2020 and completed his residency in September 2020. Dr. Farmer did not appeal or directly challenge any of the testing, diagnosis, or actions of the treatment providers, the Foundation, or the Board. The Trial Court did not allow the jury to learn about these undisputed facts, all of which were important to Baptist Health's ability to show its good faith and lack of actual malice.

This Court explained that the Trial Court prevented the jury from seeing the full picture of Baptist Health's attempts to help Dr. Farmer and instead gave the jury some of the actions taken without any context or explanation. Thus, the Trial Court's rulings to exclude vast swaths of evidence crippled Baptist Health's case and deprived it of presenting any meaningful defense.

Furthermore, this Court concluded the language of KRS 311.6191 broadly precludes parties who furnish information to the Foundation from liability for all claims arising from the referral to the Foundation, including breach of contract. However, liability can be found where there is both actual malice and lack of good faith. Continuing, this Court clarifies KRS 311.6191 indicates that the General Assembly intended to provide qualified protection from liability to parties who furnish information to the Foundation unless a plaintiff affirmatively shows bad faith and actual malice. Likewise, KRS 311.6191 clearly requires a showing that a party did not act in good faith *and* with actual malice.

I. WORKERS' COMPENSATION

A. KENTUCKY EMPLOYERS' MUTUAL INS. v. ROGER HALL, ET AL. (Ky. App. 2024)

2024-CA-1021-WC 11/08/2024 2024 WL 4714483

Opinion Reversing and Remanding by CETRULO, JUDGE; CALDWELL .J. (CONCURS) AND A. JONES, J. (CONCURS)

This is the third appeal to this Court from rulings of the ALJ and Workers' Compensation Board. The issues in this appeal are rather novel, raising questions as to 1) proper joinder of insurance carriers as parties to a compensation proceeding; and 2) the timeliness and responsibility for certification of coverage on a claim.

We reversed the ALJ and Board in this matter, finding that the ALJ erred in placing responsibility to certify coverage on the carrier initially named in the action. The ALJ also erred in finding KEMI's request untimely as the statute does not establish a timeline for subsequent certification when a carrier is found not responsible.

We also reversed the Board's ruling below. Both carriers had sought to intervene before the Board to resolve this coverage issue. The Board ruled that the two carriers were not parties to the action and that this was now a dispute between two insurers, better suited for a circuit court action. This Court disagreed with the Board, finding that the provisions of the Kentucky Workers' Compensation Act require questions as to the responsible carrier to be determined by the factfinder. This is consistent with the Act's intent and purpose and exclusive remedy provisions. The matter was reversed and remanded for a determination of the proper carrier responsible for the benefits previously awarded to Mr. Hall.

B. NORTON HEALTHCARE v. GINA M. MURPHY, ET AL. (Ky. App. 2024).

2024-CA-0444-WC 11/08/2024 2024 WL 4714480

Opinion Reversing and Remanding by ECKERLE, JUDGE; GOODWINE, J. (CONCURS) AND MCNEILL, J. (CONCURS)

This is the third appeal to this Court from rulings of the ALJ and Workers' Compensation Board, wherein the Board reversed the ALJ's ruling. The issues in this appeal include 1) whether the Board incorrectly treated the Appellee's application as an occupational disease under KRS 342.0011, and 2) whether the Board improperly directed the ALJ to apply standard of proof for causation in occupational diseases.

First, the ALJ and Board properly considered the Appellee's petition as an injury claim within the meaning of KRS 342.0011(1) as a communicable disease such as COVID-19 is compensable as an injury when the claimant established that the risk of contracting the disease is increased by the nature of her employment. Second, this Court concluded that the ALJ applied the proper standard of proof to the controlling aspect of the Appellee's claim and that his conclusion was supported by substantial evidence. Thus, this Court reversed the Board's Opinion and Order, and remanded with directions to reinstate the ALJ's Opinion and Order dismissing the Appellee's claim.

II. INSURANCE

A. JOHNNY CAUDILL v. DAILY UNDERWRITERS OF AMERICA, INC. (Ky. App. 2024)

2023-CA-1168-MR 11/15/2024 2024 WL 4795796

Opinion Affirming by TAYLOR, JUDGE; ACREE, J. (CONCURS) AND KAREM, J. (CONCURS)

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