

**UPDATED: 02/15/2012**

# **FEBRUARY 2012**

# **ORAL ARGUMENT**

# **CALENDAR**

Report Updated On: 02/15/2012

2/15/2012

**FEBRUARY, 2012**

**February 7, 2012**

**10:00 A.M., FULL COURT MEETING**

**February 7, 2012**

**1:30 P.M. MOTION PANEL, JUDGE ACREE, PRES.,  
JUDGE MOORE AND JUDGE VANMETER, ASSOC.**

**1:00 – 1:40 P.M., ORAL ARGUMENT, #2010-CA-001942,  
BRIAN LEMONS V. COMMONWEALTH OF KENTUCKY,  
SR. JUDGE LAMBERT, PRES., JUDGE CAPERTON AND  
JUDGE THOMPSON, ASSOC.**

**1:55 – 2:35 P.M., ORAL ARGUMENT, #2010-CA-002081 &  
#2010-CA-002082, TAX EASE LIEN INVESTMENTS 1, ET  
AL. V. AMERICAN GENERAL HOME EQUITY, ET AL,  
SR. JUDGE LAMBERT, PRES., JUDGE CAPERTON AND  
JUDGE THOMPSON, ASSOC.**

**PHONE NUMBERS WHERE PANEL MEMBERS CAN BE REACHED WHEN ORAL  
ARGUMENTS SCHEDULED:**

**FRANKFORT – Contact Mary Zagale (502) 573-7920**

**LEXINGTON – Contact Dana Carter (859) 246-2132**

**LOUISVILLE – Contact Marti Dodd (502) 595-3440**

**LOCATION: COURT OF APPEALS COURTROOM, 360 DEMOCRAT DRIVE,  
FRANKFORT, KENTUCKY**

**DATE: Tuesday, February 7, 2012**

01:00 PM PJ: LAMBERT, HON. JOSEPH E. CAPERTON, HON. MICHAEL O. THOMPSON, HON. KELLY  
2010CA001942 BRIAN LEMONS v COMMONWEALTH OF KENTUCKY

Appeal from a conditional guilty plea to 2nd degree manslaughter and assault under EED. Denial of motion to dismiss indictment based on self-defense immunity provision of KRS 503.085. Sufficiency of evidence supporting finding of probable cause; timeliness of motion, applicable standard of review.

CRIMINAL

CAMPBELL COUNTY

HON FRED A STINE

Appellant Atty:

BALLIET, SUSAN  
SCHMIDT, KATHLEEN

Appellant Name:

LEMONS, BRIAN

Appellee Atty:

CONWAY, JACK  
MOORE, JASON

Appellee Name:

COMMONWEALTH OF KENTUCKY

\*\* NOTE:40 MINUTE ORAL

01:55 PM PJ: LAMBERT, HON. JOSEPH E. CAPERTON, HON. MICHAEL O. THOMPSON, HON. KELLY  
2010CA002081 U.S. NATIONAL BANK ASSOCIATION, AS SUCCESSOR IN INTEREST v AMERICAN  
2010CA002082 GENERAL HOME EQUITY, INC.

Consolidated appeals following foreclosure sale and distribution of proceeds to pay ad valorem tax liens. Whether amount of "credit bid" in foreclosure sale can be considered part of sale proceeds. Liability of foreclosing mortgage company for payment of "credit bid" amounts for senior tax liens.

CIVIL

JOHNSON COUNTY

HON JOHN DAVID PRESTON

Appellant Atty:

BLISS, MATTHEW  
LAWSON, VIRGINIA

Appellant Name:

U.S. NATIONAL BANK ASSOCIATION, AS  
SUCCESSOR IN INTEREST

Appellee Atty:

MATTMILLER, M.

CHILDERS, TAMMY

CHILDERS, JOHN

BALDWIN, JEFFREY

ENDICOTT, MICHAEL

Appellee Name:

AMERICAN GENERAL HOME EQUITY, INC.

CHILDER, TAMMY

CHILDERS, JOHN

CITY OF PAINTSVILLE

JOHNSON COUNTY, KY

\*\* NOTE:40 MINUTE ORAL

**LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,**

**DATE: Wednesday, February 15, 2012**

**01:00 PM PJ: TAYLOR, HON. JEFF S. CLAYTON, HON. DENISE G. STUMBO, HON. JANET L.**  
**2011CA000602 DERICK DULIN v COMMONWEALTH OF KENTUCKY**

Whether circuit court properly denied CR 60.02 motion.

**JEFFERSON COUNTY**

**HON MITCHELL PERRY**

Appellant Atty:

Appellant Name:

**EGGERT, ROB**

**DULIN, DERICK**

Appellee Atty:

Appellee Name:

**FLOYD, SAMUEL JR  
FUCHS, GREGORY**

**COMMONWEALTH OF KENTUCKY**

**\*\* NOTE:**

**01:45 PM PJ: TAYLOR, HON. JEFF S. CLAYTON, HON. DENISE G. STUMBO, HON. JANET L.**  
**2010CA002293 BRIAN BROWN v COMMONWEALTH OF KENTUCKY**

Whether appellant should have been sentenced as a juvenile.

**CRIMINAL**

**JEFFERSON COUNTY**

**HON BRIAN C. EDWARDS**

Appellant Atty:

Appellant Name:

**HACKETT, BRUCE  
WOOD, SAMUEL**

**BROWN, BRIAN**

Appellee Atty:

Appellee Name:

**STETLER, TAMI**

**COMMONWEALTH OF KENTUCKY**

**\*\* NOTE:**

**LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,**

**DATE: Thursday, February 16, 2012**

10:45 AM PJ: STUMBO, HON. JANET L. TAYLOR, HON. JEFF S. CLAYTON, HON. DENISE G.

2011CA000076 SHIVLEY CENTER, LLC v TEXAS ROADHOUSE OF DIXIE HIGHWAY, LLC

2011CA000129

MOR appeal from grant of summary judgment in suit filed to seek declaratory judgment, injunctive relief and damages in regard to purchase of commercial property and whether the chose in action to enforce payment of parking charges was transferred to purchaser. Issues are the construction of contract, availability of remedy, applicability of laches and waiver and unjust enrichment.

CIVIL JEFFERSON COUNTY HON MARY M SHAW

Appellant Atty:

SCHWAGER, STEPHEN

Appellant Name:

SHIVLEY CENTER, LLC

Appellee Atty:

CUMMINS, PETER  
DRIGGS, JULIO

Appellee Name:

TEXAS ROADHOUSE OF DIXIE HIGHWAY, LLC

\*\* NOTE:PREVIOUSLY AT 10:00 AM

11:30 AM PJ: STUMBO, HON. JANET L. TAYLOR, HON. JEFF S. CLAYTON, HON. DENISE G.

2011CA000432 SMD ENTERPRISES, LLC v STEVE MASIELLO

MOR appeal from sua sponte order dismissing action with prejudice. Issue at the trial court was whether a contract entered into in Kentucky is enforceable where the purpose of the contract is not legal in this state but is legal in the state in which the purpose is carried out. Issues on appeal include whether trial court acted properly in its sua sponte order, whether Appellee was agent of Appellant, whether trial court could have enforced the valid provisions.

CIVIL JEFFERSON COUNTY HON CHARLES L. CUNNINGHAM

Appellant Atty:

ADAMS, GARRY JR  
CLAY, THOMAS

Appellant Name:

SMD ENTERPRISES, LLC

Appellee Atty:

CLARE, BRIAN  
MCCALL, JOHN

Appellee Name:

MASIELLO, STEVE

\*\* NOTE:

**LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,**

**DATE: Thursday, February 16, 2012**

01:00 PM PJ: TAYLOR, HON. JEFF S.

DIXON, HON. DONNA L.

LAMBERT, HON. JAMES H.

2011CA001079

DAVID LEWIS HARRIS v SUSAN ELIZABETH HARRIS

Whether circuit court erred by granting three-year extension on domestic violence order.

FRANKLIN COUNTY

HON O. REED RHORER

Appellant Atty:

Appellant Name:

HARP, JOSHUA

HARRIS, DAVID

Appellee Atty:

Appellee Name:

HUNT, REX  
SPARKS, RICK

HARRIS, SUSAN

\*\* NOTE:PREVIOUSLY ON 1/19/12 AT 9:00 AM IN FRANKFORT, KY.

01:45 PM PJ: TAYLOR, HON. JEFF S.

DIXON, HON. DONNA L.

LAMBERT, HON. JAMES H.

2011CA000248

PAULA B. BROWN v LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Whether circuit court erred by determining that the Civil Service Commission abused its discretion by excluding certain evidence.

CIVIL

FAYETTE COUNTY

HON ERNESTO M. SCORSONE

Appellant Atty:

Appellant Name:

LYNCH, MATTHEW  
STEWART, JOHN

BROWN, PAULA

Appellee Atty:

Appellee Name:

BOLAND, ROCHELLE  
BOWMAN, LESLYE

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

\*\* NOTE:PREVIOUSLY ON 1/19/12 AT 9:45 AM IN FRANKFORT, KY.

**LOCATION: JEFFERSON COUNTY JUDICIAL CENTER, 10TH FLOOR APPELLATE COURTROOM, 700 WEST JEFFERSON STREET, LOUISVILLE,**

**DATE: Thursday, February 16, 2012**

02:30 PM PJ: TAYLOR, HON. JEFF S.

DIXON, HON. DONNA L.

LAMBERT, HON. JAMES H.

2011CA000133

BRYAN FULLER v JOANN BLAIR

Whether appellee was "owner" of dog within meaning of KRS 258.235.

<b>CIVIL</b>	<b>CAMPBELL COUNTY</b>	<b>HON JULIE REINHARDT WARD</b>
<u>Appellant Atty:</u>		<u>Appellant Name:</u>
O'HARA, MICHAEL		FULLER, BRYAN
.....		
<u>Appellee Atty:</u>		<u>Appellee Name:</u>
BLACK, CATHERINE		BLACK, CATHERINE
.....		
RUDELL, BARRY II		BLAIR, JOANN
.....		

**\*\* NOTE:PREVIOUSLY ON 1/19/12 AT 10:30 AM IN FRANKFORT, KY.**

**LOCATION: FAYETTE COUNTY CIRCUIT COURT, COURTROOM I, 4TH FLOOR,  
120 NORTH LIMESTONE, LEXINGTON, KENTUCKY**

**DATE: Wednesday, February 29, 2012**

10:00 AM PJ: LAMBERT, HON. JOSEPH E.

ACREE, HON. GLENN E.

MOORE, HON. JOY A.

2010CA002194

**COMMONWEALTH OF KENTUCKY, v LEXINGTON H-L SERVICING, INC.**

At issue is whether the circuit court erred in awarding costs and attorneys' fees to two Kentucky newspapers pursuant to KRS 61.882 (5) following a finding that the Cabinet for Health and Family Services "willfully withheld" records in violation of the Kentucky Open Records Act. The Cabinet had relied upon opinions from Kentucky's Attorney General and a number of state and federal law exemptions in denying the newspapers' open records requests.

CIVIL

FRANKLIN COUNTY

HON PHILLIP J. SHEPHERD

Appellant Atty:

BURNHAM, ANNE  
IRVIN, D  
KEITH, FREDRICK  
WOMACK, MONA

Appellant Name:

COMMONWEALTH OF KENTUCKY,

Appellee Atty:

HOULIHAN, ROBERT JR  
SKIDMORE, KIF

Appellee Name:

LEXINGTON H-L SERVICING, INC.

FLEISCHAKER, JON  
ROGERS, JEREMY

THE COURIER-JOURNAL, INC.

\*\* NOTE:

10:45 AM PJ: MOORE, HON. JOY A.

ACREE, HON. GLENN E.

KELLER, HON. MICHELLE M.

2011CA000004

**LAURENCE H. KANT v LEXINGTON THEOLOGICAL SEMINARY**

Civil Case: Appeal from summary judgment; issues involve the "ministerial exception" in a termination of employment case

CIVIL

FAYETTE COUNTY

HON KIMBERLY N BUNNELL

Appellant Atty:

MILLER, CHRISTOPHER

Appellant Name:

KANT, LAURENCE

Appellee Atty:

GRIFFITH, RICHARD  
MUYSKENS, ELIZABETH

Appellee Name:

LEXINGTON THEOLOGICAL SEMINARY

\*\* NOTE:



**LOCATION: FAYETTE COUNTY CIRCUIT COURT, COURTROOM I, 4TH FLOOR,  
120 NORTH LIMESTONE, LEXINGTON, KENTUCKY**

**DATE: Wednesday, February 29, 2012**

11:30 AM PJ: ACREE, HON. GLENN E.

MOORE, HON. JOY A.

VANMETER, HON. LAURANCE B.

2010CA002212

**RANDALL L. STATHERS v GARRARD COUNTY BOARD OF EDUCATION**

2010CA002281

Civil; Summary Judgment; Immunity: Appeal (1) Whether the trial court erred in granting the appellees summary judgment on the basis that the appellants' expert opinion failed to establish a causal connection between the appellees' conduct and the damage to the appellants' homes. (2) Whether the trial court erred in finding the appellants failed to submit sufficient lay testimony to establish the requisite causal connection. Cross-Appeal – Whether the Garrard Co. Board of Education is entitled to governmental immunity.

CIVIL

**GARRARD COUNTY**

**HON C. HUNTER DAUGHERTY**

Appellant Atty:

CALVERT, GERRY  
LONG, JAMES JR

Appellant Name:

STATHERS, RANDALL

Appellee Atty:

DAVIS, MICHAEL  
WALTERS, JOHN

Appellee Name:

BRANSCUM CONSTRUCTION COMPANY, INC.

DUNLAP, WHITNEY III  
HOBACK, WILLIAM

GARRARD COUNTY BOARD OF EDUCATION

KESSINGER, JAMES

IMPACT DRILLING AND BLASTING, INC.

JONES, EVAN  
MCNEILL, JOHN

IRVINE AND PYLES DRILLING COMPANY, INC.

**\*\* NOTE:**

01:00 PM PJ: CAPERTON, HON. MICHAEL O.

ACREE, HON. GLENN E.

LAMBERT, HON. JOSEPH E.

2010CA001798

**JIMMY KIRBY v LEXINGTON THEOLOGICAL SEMINARY**

Case of first impression in which Appellant appeals a dismissal from circuit court for lack of subject-matter jurisdiction under the religion clauses of the First Amendment to the Constitution. Interpretation of Ecclesiastical Abstention Doctrine.

CIVIL

**FAYETTE COUNTY**

**HON THOMAS L CLARK**

Appellant Atty:

HOWARD, DOUGLAS  
JONES, AMOS

Appellant Name:

KIRBY, JIMMY

Appellee Atty:

GRIFFITH, RICHARD  
MUYSKENS, ELIZABETH

Appellee Name:

LEXINGTON THEOLOGICAL SEMINARY

**\*\* NOTE:**

**LOCATION: FAYETTE COUNTY CIRCUIT COURT, COURTROOM I, 4TH FLOOR,  
120 NORTH LIMESTONE, LEXINGTON, KENTUCKY**

**DATE: Wednesday, February 29, 2012**

01:45 PM PJ: STUMBO, HON. JANET L.

COMBS, HON. SARA W.

KELLER, HON. MICHELLE M.

2010CA001282

MARY B. CALHOUN v CHARLES E. PROVENCE II.

2010CA001348

MOR appeal and cross appeal from Jury trial in personal injury case resulting in verdict for appellant. Issues are 1)whether trial court erred in bifurcating of trial; 2) whether trial court erred in directing verdict for two defendants, 3) whether trial court erred in failing to grant directed verdict and grant new trial to appellant/plaintiff on issue of causation, 4) whether trial court erred in excluding evidence, 5) whether as a matter of law title passed from one dealer to another thereby passing legal responsibility for insurance coverage.

CIVIL

LAUREL COUNTY

HON GREGORY A. LAY

Appellant Atty:

GIBSON, RALPH

Appellant Name:

CALHOUN, MARY

Appellee Atty:

BUTTERMORE, RODNEY JR

Appellee Name:

KENTUCKY AUTO EXCHANGE, INC.

FELD, TIMOTHY  
MEADOWS, DREW

LEGEND MOTORS, INC.

MIDDLETON, THOMAS

MIDDLETON, THOMAS

TOOMS, R

PROVENCE, CHARLES

RIDINGS, JAMES  
RIDINGS, MARCIA

YADEN'S AUTO SALES, INC.

**\*\* NOTE:60 MINUTE ORAL - PREVIOUSLY ON 2/15/12 IN LOUISVILLE, KY AND ON 1/30/12 IN STANTON, KY**