PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
APRIL 1, 2025 to APRIL 30, 2025

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I. CONSTITUTIONAL STANDING

A. KENTUCKY CONSTABLES ASSOCIATION, INC., ET AL. v. KENTUCKY DEPARTMENT OF CORRECTIONS CRIMINAL JUSTICE TRAINING (DOCJT), ET AL. (Ky. App. 2025).

2024-CA-0186-MR 4/25/2025 2025 WL 1196913

Opinion Affirming by L. JONES, JUDGE; THOMPSON, C.J. (CONCURS) AND CALDWELL, J. (CONCURS)

Appellants bring this appeal from a Franklin Circuit Court Order granting five motions to dismiss pursuant to CR 12.02. We affirm the circuit court's order granting the motions to dismiss for failure to state a claim upon which relief could be granted and dismissing the petition for declaration of rights in favor of Appellees.

This appeal pertains to constables, the necessary qualifications, and scope of the office as set forth under the Kentucky Constitution, sections 99, 100, and 101. In 2022, the General Assembly enacted 2022 Kentucky House Bill No. 239 (HB 239), which introduced both new and amended legislation to improve the regulation of constables in the Commonwealth. HB 239 created KRS 70.325, which some portions therein essentially removed from newly elected constables the authority to exercise the general powers of peace officers and police officers absent the mandated certification. Subsequently, Appellants sought both a declaration that the statutory amendments made by HB 239 were unconstitutional and a stay against the enforcement of the new law, arguing that HB 239 unlawfully alters the Kentucky Constitution by stripping constables of police powers and changing qualifications for the office of constable.

Appellants set forth nine claims against Appellees. However, an initiating party of an action must have the requisite constitutional standing, as defined by three requirements: injury, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). After a thorough analysis of Appellants' many claims of error as to each Appellee, we concluded Appellants' largely failed to show the named agencies and individuals were responsible for the alleged harm and entirely failed to establish redressability.

Furthermore, the General Assembly is allowed to set forth powers and duties by statute to the office of constable because the Kentucky Constitution is silent thereto, despite the

office being created by the Kentucky Constitution. Amending or creating legislation to alter those powers and duties or place limits upon the exercise of those powers and duties does not alter the qualifications for the office set forth by the Constitution. Additionally, the office of constable has not been rendered an empty shell by the new legislation. Constables can still exercise many of their traditional functions, they can still assist the courts and others with the service of papers, and they may still pursue the certification necessary to exercise police power.

In sum, Appellants have no right to exercise police powers bestowed on them by the Kentucky Constitution and have failed to present any justiciable claims against Appellees. We affirm the circuit court's dismissal for failure to state a claim upon which relief can be granted.

II. CRIMINAL

A. JASON SPEARS v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025).

2023-CA-1493-MR 4/4/2025 2025 WL 1005889

Opinion Vacating in Part and Remanding by A. JONES, JUDGE; COMBS, J. (CONCURS) AND MCNEILL, J. (CONCURS)

In a direct appeal from the trial court's judgment following entry of the Appellant's unconditional guilty plea, the Court of Appeals vacated the sentence in part. Appellant and the Commonwealth negotiated a late plea deal on the Friday before the Appellant's trial date scheduled for Monday morning. The trial court was notified on Friday afternoon, but it declined to accept the negotiated plea on Monday morning because the jury venire had been assembled. Appellant was informed at that time that the trial court would only accept a "naked" guilty plea without any assurances. After Appellant entered his guilty plea, the trial court sentenced him to the maximum concurrent sentence of three-years' incarceration for Class D felony drug possession. Upon motion by the Commonwealth, the trial court also assigned the costs of the jury venire to Appellant as part of his sentence, in the amount of $862.50.

Appellant presented two arguments on appeal. First, he contended the trial court erroneously failed to offer presumptive probation for his drug possession charge, as required under KRS 218A.1415(2)(d). However, counsel at oral argument acknowledged this issue was moot because Appellant had been released on parole and had successfully completed his supervision by the Department of Corrections. Accordingly, the Court of Appeals declined to consider this issue because a decision could have no practical legal effect upon an existing controversy.

For his second issue on appeal, Appellant contended the trial court erroneously imposed jury costs in a criminal case. The Court of Appeals agreed, noting that costs assessed a criminal defendant are authorized by statutes or local rules. The Court then held that the portion of the trial court's judgment assessing jury costs against a criminal

defendant lacked authority, either by statute or by rule, and Appellant was given no notice of a possible sanction for entering a late guilty plea. For these reasons, the Court vacated the portion of the judgment which imposed jury costs and remanded to the trial court for entry of a new judgment.

III. FAMILY LAW

A. S.S. v. A.L.B., A CHILD, ET AL. (Ky. App. 2025).

2024-CA-1121-ME 4/11/2025 2025 WL 1085155
2024-CA-1124-ME

Opinion Affirming by ECKERLE, JUDGE; ACREE, J. (CONCURS) AND COMBS, J. (CONCURS)

In 2022, the Cabinet filed petitions to terminate the parental rights of S.S. ("Father") and J.F.C. ("Mother"). At the time of the hearing in 2024, both parents were incarcerated. Mother agreed to a voluntary termination of her parental rights. Father had been incarcerated for most of the children's lives and he never had custody of or supported the children in any manner. He was also facing significant, additional Federal prison time. The Family Court ultimately granted the Cabinet's petition to terminate Father's parental rights. The Court of Appeals concluded that there was clear and convincing evidence to affirm. Although a parent's incarceration alone is insufficient, the Family Court properly considered Father's repeated incarcerations, failure to support the children, and lack of reasonable expectation of improvement in circumstances given the age of the children and his lengthy incarceration.

However, the Court had significant concerns about the manner in which the hearing was conducted. When the Cabinet called Father to testify, Father objected, citing his Fifth Amendment privilege. The Family Court overruled the objection and required him to testify. While the Court condemned compelling his testimony, the Court acknowledged that the Family Court carefully reviewed objections as to specific questions that could have even remotely implicated that right. And while Father's trial counsel moved to strike the testimony, Father's appellate counsel relied on the testimony to challenge the termination. And notably, Father's testimony was not determinative of the decision to terminate parental rights. Consequently, given the innocuous nature of the testimony, the Court declined to reverse. However, the Court cautioned strongly against compelling this type of testimony in the future, particularly given that the Cabinet bears the burden of proof, which is not typically met by calling the opposing party as a witness.

B. KEVIN WAYNE HOGLE v. STEPHANIE NICOLE HOGLE (Ky. App. 2025)

2024-CA-0731-ME 2/26/2025 2025 WL 569241

Opinion Affirming by McNEILL, JUDGE; A. JONES, J. (CONCURS) AND COMBS, J. (CONCURS)

Kevin appealed from a DVO entered on behalf of his spouse, Stephanie Nicole (Nicole). Kevin claimed the family court erred because there was insufficient evidence to support the DVO's entry and that the family court erred by not transferring the matter from Division 6 to Division 5 of the Kenton Circuit Court, where the parties' dissolution action was assigned. The Court of Appeals affirmed the family court.

First, the Court of Appeals held that the family court did not err in its analysis of whether domestic violence occurred and could occur again in the future. The family court considered the volatile nature of the parties' relationship leading up to the incident cited in the petition and Kevin's surveillance of Nicole through the minor children. Additionally, persistent text messages and the use of a private investigator were cumulative acts by Kevin that indicated domestic violence may occur again. The family court was also within its discretion to find Kevin's testimony not credible.

Second, according to the Kenton County Family Local Rules of Practice, transfer of the DVO from Division 6 to Division 5 was not mandatory, given that the dissolution action was in its earliest stages (it had not proceeded past Kevin's filing an answer to the petition). This is in accordance with Kentucky caselaw because the DVO was the first order entered in the Kenton Family Court between the parties, which means no fractionalization of jurisdiction occurred.

IV. FUNERAL PLANNING

A. HAROLD DANIELS v. MELISSA DANIELS, ET AL. (Ky. App. 2025).

2023-CA-1027-MR 4/18/2025 2025 WL 1141918

Opinion Affirming by A. JONES, JUDGE; COMBS, J. (CONCURS) AND KAREM, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 10/15/2025

In an appeal from the trial court's order dismissing Appellant's claims against the Appellees, the Court of Appeals affirmed. Appellant's deceased son was buried in one of three cemetery plots owned by the Appellant. The son's mother, who predeceased him, was buried in one of the three plots as well. The first-named Appellee, Melissa Daniels, was married to the son at the time of his death and initially accepted this plan. However, six months after interment, at Melissa's direction, the cemetery disinterred the son and relocated his remains to a mausoleum in a different location. Appellant was not notified of his son's relocation. Appellant sued the Appellees, seeking an injunction for reinterment of the son's remains to their original place of burial, costs of performing the reinterment, costs of the suit, and emotional distress damages. The trial court granted

Melissa's motion to dismiss pursuant to CR 12.02(f), concluding that Melissa was next-of-kin for purposes of deciding the disposition of the son's remains.

The Court of Appeals affirmed, holding that the trial court correctly applied KRS 367.93117 and 901 KAR 5:090 to ascertain who had the proper authority over the son's disinterment and reinterment. KRS 367.93117 contains a priority list ranking those with authority regarding interments, and the surviving spouse is ranked higher than the decedent's parents. Section 2(g) of 901 KAR 5:090 provides that an application for disinterment must include "a statement by the applicant that [s]he has obtained written permission from all members of the same class of the next-of-kin or an order from a court of competent jurisdiction for the removal of the remains." (Emphasis added.) Because Melissa, as surviving spouse, was in a class by herself which was higher than that of the Appellant, she was not required to obtain the Appellant's permission for the disinterment and reinterment.

V. OPEN RECORDS ACT

A. BOONE COUNTY CLERK JUSTIN CRIGLER v. CHRISTINE MCLAUGHLIN (Ky. App. 2025).

2024-CA-0399-MR 4/25/2025 2025 WL 1196304

Opinion Reversing and Remanding by CALDWELL, JUDGE; ACREE, J. (CONCURS) AND LAMBERT, J. (CONCURS)

This matter arose from Boone County Clerk Justin Crigler's appeal from the trial court's grant of a petition for open records inspection of cast ballots. The County Clerk contends that the trial court erred in determining that cast ballots are public records and that cast ballots are not excepted from inspection under the Open Records Act. The Court of Appeals reversed and remanded for entry of an order denying the petition for inspection of cast ballots.

The matter primarily hinges on matters of statutory interpretation of Kentucky's election laws, Kentucky's Open Records Act, and our Kentucky Constitution. Despite concluding a cast ballot meets the broad definition of *public record* in KRS 61.870(2), we held that cast ballots are excepted from inspection under the Open Records Act.

Kentucky law strongly recognizes an interest in keeping individuals' votes private. *See, e.g.,* KY. CONST. § 147; KRS 118.025(1); *Banks v. Sergent*, 104 Ky. 843, 48 S.W. 149, 151 (1898). While recognizing that nothing in Kentucky's election statutes specifically prohibits the inspection sought under the present circumstances, disclosure of ballots and the information therein is clearly restricted by Kentucky Legislative enactments, and thus ballots are excepted from application of the Open Records Act. KRS 61.878(1)(l). In sum, the constitutionally enshrined secrecy of the ballot outweighs any public interest in allowing inspection of cast ballots, especially since other election records are already available for public inspection. There remain other options for citizens to obtain

important information and be involved in ensuring fair elections; however, the secrecy of the ballot remains paramount.

VI. PROPERTY

A. MADISON COUNTY UTILITIES DISTRICT v. CITY OF RICHMOND, ET AL. (Ky. App. 2025).

2023-CA-1401-MR 4/4/2025 2025 WL 1006036

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

DISCRETIONARY REVIEW GRANTED 12/10/2025

This case arose from a dispute about water service to a Madison County property ("the Property") recently annexed to the City of Richmond. Madison County Utilities District ("MCUD") appealed from an Order ("the Order") denying its motion for a temporary injunction and granting a motion for summary judgment in favor of the City of Richmond, Richmond Utilities, and A & R Contractors, LLC, (collectively "Appellees"), wherein the court rejected MCUD's argument that it had the dominant right to serve the Property and determined the agreement to negotiate about other territories was unenforceable. MCUD argued that the trial court misconstrued KRS 96.538(2) and KRS 96.150(1); erred by disregarding the contractual provisions to negotiate concerning other territories in good faith; and erred in granting summary judgment. We reverse and remand.

First, the trial court erred in its overly narrow interpretation of terms in KRS 96.538(2). The trial court declared the use of the terms *providing service* and *being served* in KRS 96.538(2) and KRS 96.150(1) plainly meant only the actual delivery of water to a consumer on the property at issue. However, there can be more than one plain meaning of a term, especially in complex, specific contexts such as water service disputes. In short, we cannot agree with the trial court that actual delivery of water to consumers is the only plain meaning of *being served* or *providing service* in this context. Statutes should be interpreted liberally to achieve their purposes. KRS 446.090(1). KRS 96.538(2) and KRS 96.150(1) reflect an implicit intent to provide protection from municipal encroachment for water districts that have invested in infrastructure to make service available to rural customers. We conclude it is unreasonable to narrowly construe KRS 96.538(2)'s protection for water districts providing service in an area as only referring to actual delivery of water to consumers in the area. Thus, properly applying a broader definition of *providing service* and construing the evidence in light most favorable to MCUD for purposes of reviewing the summary judgment, MCUD was a utility providing water service in the annexed property at issue. MCUD has a dominant right under KRS 96.538(2) to continue providing water service to the Property.

Second, we find the trial court correctly held that the contract provision at issue was unenforceable, and the Appellees had no duty to negotiate about water service to the Property. The conclusion reached was well-supported by authority cited by Appellees and rendered any factual issues about negotiations or the lack thereof immaterial to resolving the parties' dispute about the water service rights to the Property.

Finally, we agree that the trial court erred in granting summary judgment. We are not convinced that the Appellees have shown the non-existence of genuine issues of material fact or demonstrated that they are entitled to judgment in their favor. We reverse the trial court's grant of summary judgment in favor of Appellees and remand the case.