PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
April 1, 2026 to April 30, 2026

Note to practitioners: These are the Opinions designated for publication by the Kentucky Court of Appeals for the specified time period. Practitioners should Shephardize all case law for subsequent history prior to citing it.

I. CIVIL LAW

A. 723 VAPE, INC., ET AL. v. ALLYSON TAYLOR, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE KENTUCKY DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, ET AL. (Ky. App. 2026).

2024-CA-1060-MR 4/03/2026 2026 WL 911726

Opinion Affirming by MCNEILL, JUDGE; CALDWELL, J. (CONCURS) AND TAYLOR, J. (CONCURS)

The Kentucky Court of Appeals affirmed the Franklin Circuit Court's dismissal of a constitutional challenge to House Bill 11, which regulates vapor products by allowing sales only of FDA-authorized products or those with FDA "safe harbor" certification, and by removing prior statutory distinctions between vapor and nicotine products. Appellants argued HB 11 violated Section 51's single-subject and title requirements because the act titled "AN ACT relating to nicotine products" also referenced "other substances," including unauthorized and non-nicotine products. The Court held that the title provided adequate notice and that references to unauthorized products were germane to the bill's subject. The Court also found Appellants' claims under Section 2 and the Fourteenth Amendment to be unconvincing, concluding HB 11 is not arbitrary. Rather, it is rationally related to a legitimate state interest within the General Assembly's police powers over public health and safety. Ultimately, the judgment was affirmed.

B. JESSICA SANER, ET AL. v. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. (Ky. App. 2026).

2025-CA-0234-MR 4/03/2026 2026 WL 917686

Opinion Affirming by L. JONES, JUDGE; CETRULO, J. (CONCURS) AND COMBS, J. (CONCURS)

Appellants are childcare providers. During the COVID-19 pandemic, the federal government made funds available to states to distribute to childcare providers. The Cabinet for Health and Family Services was responsible for distributing those funds to

providers in Kentucky. The contracts between the Cabinet and Appellants required the providers to submit a data sheet to a third-party by the fifth of each month and conditioned payments to providers upon the providers complying with the contracts. When Appellants submitted a tardy data sheet, the Cabinet declined to provide funds to the providers. Appellants then filed this action against the Cabinet and the third-party for breach of contract, promissory estoppel, and negligence. The circuit court dismissed all claims against both defendants.

The Court affirmed the dismissal of the breach of contract claims against the Cabinet on failure to exhaust administrative remedies grounds since Appellants had not presented those claims to the Secretary of the Finance and Administration Cabinet before seeking judicial relief, as required by KRS 45A.230 et seq. The Court affirmed the dismissal of the breach of contract claims against the third-party administrator because Appellants had not shown the existence of a contractual relationship between themselves and the third-party. The Court affirmed the dismissal of promissory estoppel claims against the Cabinet because Appellants had not demonstrated exceptional circumstances allowing the invocation of estoppel claims against a governmental agency. The Court affirmed the dismissal of the promissory estoppel claims against the third-party because the Appellants had not shown the third-party made a promise to them. The Court affirmed the dismissal of negligence claims against the Cabinet on failure to exhaust administrative remedies grounds since Appellants had not presented those claims to the Board of Claims before seeking judicial relief. The Court affirmed the dismissal of negligence claims against the third-party because Appellants had not shown the third-party owed a duty to Appellants.

C. ***KENTUCKY DOWNS, LLC, ET AL. v. ARKK PROPERTIES, LLC, ET AL. AND ARKK PROPERTIES, LLC, ET AL. v. RUSSELL COLEMAN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY, ET AL. (Ky. App. 2026).***

2023-CA-1150-MR 2/27/2026 2026 WL 546213
2024-CA-0875-MR
Opinion Affirming by THOMPSON, CHIEF JUDGE; EASTON, J. (CONCURS) AND ECKERLE, J. (CONCURS)

The Court of Appeals affirmed a circuit court grant of summary judgment which held that House Bill (H.B.) 594, 2023 Ky. Acts, Ch. 4 was constitutional. H.B. 594 amended the definitions of “gambling” and “gambling device” in Kentucky Revised Statutes (KRS) 528.010 to make skill-based amusement games illegal in Kentucky. The Court held that, based on a rational-basis review, H.B. 594 did not violate due process, equal protection, or freedom of speech.

D. CVS PHARMACY, INC. v. JAMES DUSTIN CHANEY, D.O., ET AL. (Ky. App. 2026).

2024-CA-0798-MR 4/24/2026 2026 WL 1108778
2024-CA-0962-MR

Opinion Reversing and Remanding as to Appeal NO. 2024-CA-0798-MR and Dismissing as to Cross-Appeal NO. 2024-CA-0962-MR by MCNEILL, JUDGE; CETRULO, J. (CONCURS) AND L. JONES, J. (CONCURS)

Appellee, James Dustin Chaney, a former practicing physician, filed negligence and false light claims against Appellant, CVS, and other pharmacies, asserting that controlled substance prescriptions were misattributed to his Drug Enforcement Administration number in the Kentucky All Schedule Prescription Electronic Reporting System. The complaint alleged that CVS's conduct led to investigations by state and federal authorities, the loss of his ability to practice medicine, and his indictment. Following a jury trial, Chaney was awarded $7,560,000.00 in damages, which was later reduced to $2,160,000.00.

CVS appealed the judgment, arguing it was entitled to a directed verdict because Chaney had failed to prove the elements of his negligence and false light claims. Specifically, it argued there was no evidence that any misattributions by CVS caused Chaney's harm or that it had "publicized" any misattributed prescriptions. Chaney cross-appealed, contending the circuit court erred in reducing the jury's damage award. The Court of Appeals agreed with CVS and reversed the circuit court's judgment with directions to dismiss Chaney's complaint. It dismissed Chaney's cross-appeal as moot.

E. JAMES IVY v. ONTRAC, INC., D/B/A BLITZ BUILDERS, INC. (Ky. App. 2026).

2024-CA-1275-MR 4/24/2026 2026 WL 1109120
2024-CA-1344-MR
2025-CA-0429-MR

Opinion Affirming in Part, Reversing in Part, and Remanding by ECKERLE, JUDGE; THOMPSON, C. J. (CONCURS) AND COMBS, J. (CONCURS)

This appeal addresses the award and collection of attorneys' fees and discusses the intersection among contract provisions, the American rule against awarding fees, and notions of prevailing party. The contract between a pole-barn builder and a property owner included a single clause giving the builder the right to collect all costs and expenses, including attorneys' fees, if the builder was "required to employ an attorney to enforce the provisions of" the contract.

The owner, who did not read the contract or employ an attorney to do so prior to signing, later hired counsel and sued, alleging shortcomings in the builder's performance, defective work, negligence, and delays in completing construction and requesting compensatory and punitive damages. A jury returned a verdict in favor of the owner but only awarded partial damages, which equated to the value of overhead doors that the builder failed to deliver and install, due allegedly to owner's non-cooperativeness. Both parties then sought their respective attorneys' fees, each claiming a unilateral right to do so under the contract and discussing notions of the meaning of "prevailing party" and "enforcement" without the initiation of "litigation." The trial court denied the owner's entitlement to attorneys' fees and, pursuant to the contract's fee provision, awarded the builder a reduced amount of its requested attorneys' fees.

Subsequently, the builder sought non-wage garnishment of owner's joint checking account to recoup its attorneys' fees. The owner challenged the garnishment by asserting a statutory exemption for his spouse's retirement benefits, which were deposited to the joint account. The Trial Court denied the challenge, holding that retirement benefits, once paid out to the beneficiary, were not exempt from garnishment.

On appeal, the Court of Appeals held that the owner was not entitled to attorneys' fees under principles of equity or the contract's unilateral fee provision, which was neither unconscionable nor contrary to public policy. The Court affirmed the award of fees to the builder but held that the Trial Court abused its discretion in awarding a lump sum of fees without sufficient evidence on which to base a reasonable award, thereby compelling reversal and remand for reconsideration as to the amount. Finally, the Court affirmed the Trial Court's holding that the spouse's retirement funds, once commingled in the joint account, lost their status of statutory exemption.

F. MICHAEL WHITEHEAD AS ADMINISTRATOR OF THE ESTATE OF CHRISTA JENNIFER WHITEHEAD v. MEMBERSELECT INSURANCE COMPANY (Ky. App. 2026).

2025-CA-1029-MR 4/24/2026 2026 WL 1109161

Opinion Affirming by CETRULO, JUDGE; CALDWELL, J. (CONCURS) AND EASTON, J. (CONCURS)

This appeal followed the dismissal of an action against an out-of-state insurer for lack of personal jurisdiction.

Two Michigan residents died in Kentucky following a single car accident. The Estate of the passenger filed a bad faith claim against their Michigan insurance company pursuant to Kentucky's Unfair Claims Settlement Practices Act, alleging delay in payment. MemberSelect, which is not registered to do business in Kentucky and does

not transact any business in Kentucky, moved for dismissal. The trial court found that plaintiff failed to establish the circumstances to permit personal jurisdiction under the long-arm statute or constitutional due process. We affirmed.

Under the versions of KRS 454.210 in effect at the time, the court properly looked at whether the cause of action arose from activities and conduct of the non-resident defendant that fall within the long-arm statute, and have a direct nexus to the injury alleged. Here, the Estate failed to meet its burden of proving any minimum contacts with Kentucky such that it could reasonably expect to be called into a Kentucky court to defend an action claiming delay of payment to its insureds under its Michigan policy. Providing coverage for accidents nationwide is not enough to confer personal jurisdiction on a party that has taken no steps to purposefully avail itself of that forum.

II. CRIMINAL LAW

A. BILLY MCKENZIE v. COMMONWEALTH OF KENTUCKY (Ky. App. 2026).

2024-CA-0134-MR 4/24/2026 2026 WL 1108810

Opinion Reversing in Part and Affirming in Part by ACREE, JUDGE; COMBS, J. (CONCURS) AND ECKERLE, J. (CONCURS)

Appellant pleaded guilty in separate prosecutions before the same judge, each to one count of flagrant nonsupport relating to children by different mothers. His plea agreement in each case sentenced him to five years imprisonment, probated contingent upon his payment of child support to each mother. The trial court entered judgment without stating either that the sentences were to run concurrently or consecutively. Quoting KRS 532.110(1), the Court of Appeals said, “at the time of sentence” the trial court “shall determine” whether multiple sentences of imprisonment imposed on a defendant are to run concurrently or consecutively. However, if the court fails to specify how separate sentences are to run, as in this case, they shall run concurrently, subject to limited exceptions inapplicable in this case. KRS 532.110(2). By this statute, Appellant’s sentences were required to run concurrently. Although the trial court was within its discretion to revoke probation, it erred by modifying the sentence to run consecutively beyond its jurisdiction which ended ten days after entry of judgment. *Goldsmith v. Commonwealth*, 363 S.W.3d 330, 335 (Ky. 2012).