PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
AUGUST 1, 2025 to AUGUST 31, 2025

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I. CIVIL PROCEDURE

A. BARRY A. SATURDAY, ET AL. v. FAYETTE COUNTY BOARD OF EDUCATION, ET AL. (Ky. App. 2025).

2024-CA-1244-MR 8/29/2025 2025 WL 2485841

Opinion Affirming by EASTON, JUDGE; COMBS, J. (CONCURS) AND LAMBERT, J. (CONCURS)

Appellant, *pro se*, filed suit on behalf of his children raising several tort claims. Appellant was informed by the circuit court that he could not represent the children's interests and that he needed to hire an attorney; however, he never hired an attorney. Following a hearing on April 10, 2024, the circuit court announced that Appellant's claims would be dismissed with prejudice while the children's claims would be dismissed without prejudice. The written order was not entered until June 4, 2024, and Appellant did not receive a copy until Saturday, June 15, 2024. Appellant filed his CR 59.05 motion on June 17, 2024. Under CR 59.05, the motion had to be served no later than June 14, 2024, and Appellant conceded the motion was untimely. Subsequently, Appellant filed a CR 60.02 motion asking the circuit court to find excusable neglect and to apply equitable tolling. The CR 60.02 motion was denied and Appellant timely appealed.

Appellant argued on appeal the circuit court abused its discretion in failing to apply equitable tolling to his untimely CR 59.05 motion. "Equitable tolling pauses a limitations period and does not require any wrongdoing, but rather applies when a plaintiff, despite all due diligence . . . is unable to obtain vital information bearing on the existence of his claim." *Williams v. Hawkins*, 594 S.W.3d 189, 193 (Ky. 2020). Here the circuit court did not abuse its discretion. It was undisputed that Appellant did not receive his copy of the order until after the time had passed to timely file a CR 59.05 motion. However, he had received a courtesy copy of the order from Appellees' attorney the day before the time ran and could have signed up to be electronically notified when the order was entered. Additionally, Appellant was generally aware of the circuit court's ruling due to the April 10, 2024, hearing. Appellant also could have filed a direct appeal, but, instead, chose to file a CR 60.02 motion. Regardless, the CR 60.02 motion was properly denied

because the rule cannot be utilized to make arguments that should have been made in a direct appeal.

II. CONTEMPT ORDERS

A. STEPHEN GALVIN v. FIRST & PEOPLE'S BANK AND TRUST COMPANY, ET AL. (Ky. App. 2025).

2024-CA-0235-MR 8/29/2025 2025 WL 2485579

Opinion Reversing by TAYLOR, JUDGE; LAMBERT, J. (CONCURS) AND MCNEILL, J. (CONCURS)

Appellant is the President and Chief Executive Officer of U.S. Credit, Inc. (USCI). In August 2023, a lawsuit was filed against USCI for the collection of funds USCI allegedly owed under a contract. Appellant was never named as a party to the lawsuit. In December 2023, a motion for contempt was filed against USCI. Ultimately, however, an order was entered in January 2024, holding Appellant in contempt. Following entry of the contempt order, Appellant entered a limited appearance so he could file an objection to the contempt order. The circuit court never addressed Appellant's objection and this appeal followed.

The issue addressed on appeal was whether the circuit court abused its discretion in holding Appellant in contempt. After setting out the two types of contempt and the purpose of each type of contempt, the Court acknowledged that while the underlying proceedings may have begun as civil contempt proceedings against USCI, "the case morphed into a criminal contempt proceeding against" Appellant. Because this was a criminal contempt proceeding against Appellant, evidence needed to be presented that Appellant had wilfully disobeyed the circuit court's order, and the allegation of contempt needed to be proven beyond a reasonable doubt. Here the circuit court erred given that no evidence was presented, at any of the hearings, regarding Appellant's alleged contemptuous behaviour. The Court also found it troubling that the circuit court failed to serve notice on Appellant, individually, of the contempt proceedings against him. As a result of these errors, the circuit court's contempt order was reversed.

III. CONTRACTS

A. ISCO INDUSTRIES, INC. v. THOMAS W. O'NEILL (Ky. App. 2025).

2024-CA-1122-MR 8/8/2025 2025 WL 2263865

Discretionary Review Granted 9/16/2026

Opinion Reversing and Remanding by CETRULO, JUDGE; ACREE, J. (CONCURS) AND TAYLOR, J. (CONCURS)

This appeal follows several rulings over a four-year period, culminating in a jury trial on the limited claims remaining. Finding that the trial court's rulings on a motion to dismiss and a motion for partial summary judgment were in error, we reversed.

O'Neill was a highly compensated executive at Isco Industries for over 20 years. When he resigned from employment, he admittedly took or copied business records that were allegedly confidential and proprietary. He had previously agreed, in writing, not to do so and had been compensated for that written agreement.

Isco sued for breach of contract, asserting further that O'Neill had shared the alleged confidential information in two separate lawsuits. O'Neill responded, asserting the "judicial statements" privilege. The trial court ruled in O'Neill's favor, applying the privilege to give him complete immunity from suit for breach of contract to the extent there were disclosures in the two other lawsuits. This Court held, in a case of first impression, that the privilege did not apply to this "taking of and sharing of" information in the context of a breach of a contract action. To hold otherwise would undermine our strong public policy in favor of freedom of contract. This was also held to be more in the nature of conduct than a communicative act. Our precedent has found the judicial statements privilege does not cover conduct. Because the jury did not hear the evidence of the alleged breach and because the trial court did not address whether the information was in fact confidential and a material breach, the case was remanded for further proceedings.

IV. CRIMINAL

A. SARAH PARR v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025).

2024-CA-0406-DG 8/1/2025 2025 WL 2176743

Opinion Affirming by EASTON, JUDGE; ACREE, J. (CONCURS) AND L. JONES, J. (CONCURS)

The Court granted discretionary review to address whether, in DUI cases involving marijuana, the Commonwealth must present expert testimony to explain blood test results and to specifically prove how the measured levels of marijuana metabolites show impaired driving ability. The Court ultimately held that this type of expert was unnecessary in this particular case because there was ample evidence proving that Appellant was impaired while driving. The evidence included: testimony of Appellant's erratic and dangerous driving for up to twenty miles; testimony that officers smelled marijuana on Appellant and in her vehicle; she had red, glassy, bloodshot eyes when stopped; testimony that she failed her field sobriety tests; and that her blood test showed the presence Delta-9 THC, the ingredient in marijuana that causes impairment. The Court acknowledged that there were instances when an expert may be needed to explain blood test results; however, this was not that type of case.

V. FAMILY LAW

A. JAMES LAWRENCE DAVIS v. ANN MARIE DAVIS (Ky. App. 2025).

2024-CA-0513-MR 8/8/2025 2025 WL 2263946

Opinion Affirming in part, Reversing in part, and Remanding by CALDWELL, JUDGE; EASTON, J. (CONCURS) AND L. JONES, J. (CONCURS)

The parties filed for divorce in February 2021. In May 2021, the circuit court entered an order which, in relevant part, gave Appellant exclusive possession of the marital home and required him to make the mortgage payments. The order further stated that neither party would be responsible for child support. Thereafter, on September 2, 2021, Appellant filed a motion for child support. Appellee filed a response objecting to the motion arguing she was entitled retroactive child support. Notably, Appellee never filed a separate motion for child support. The circuit court declined to address child support until the final hearing in September 2023. Also, in December 2023, the circuit court conducted a hearing on a motion to compel the sale of the marital residence, which resulted in an order to sell the marital home and to equally divide the net sale proceeds. A divorce decree was entered on April 2, 2024. The decree, in pertinent part, required Appellant to pay monthly child support retroactive to his September 2, 2021, motion for child support. Further, after calculating the child support arrears Appellant owed, the circuit court denied Appellant's request for credit for the payments he made on the mortgage. Appellant filed this appeal arguing the circuit court erred in declining to give him a credit for a post-separation mortgage balance reduction, and in awarding child support retroactively.

On appeal, the Court affirmed the circuit court's decision to deny Appellant's request for credit for a post-separation mortgage balance reduction. Appellant argued he reduced the balance of the mortgage on the marital property before it was sold, therefore, it was equitable to award him credit. However, the Court emphasized that, unlike property, there is no presumption that debt incurred during a marriage is marital or nonmarital. And the circuit court did not abuse its discretion in finding that whatever credit Appellant may have felt entitled to was offset by Appellee's need to obtain alternate lodging, at a cost considerably more than the mortgage payments, due to Appellant's exclusive possession of the martial residence.

As for the second issue, the Court reversed the circuit court's decision to make Appellant's child support payments retroactive to his September 2, 2021, motion for child support. First, the Court clarified that its review would be based on whether the circuit court complied with the controlling law about awarding child support on a non-temporary basis. Second, the Court held there was no palpable error in the family court's failure to discuss KRS 403.213 because the statute's requirements regarding modification did not clearly apply to the May 2021 temporary order in this case.

However, the Court held that there was palpable error as to the circuit court awarding child support retroactive to Appellant's September 2, 2021, motion. While Kentucky allows child support to be applied retroactively, it can only be applied retroactive to the date the recipient files their motion. The rule does not extend to when the recipient's former spouse files a motion. Here, the circuit court treated Appellee's response to Appellant's September 2, 2021, motion as a motion for child support. The Court held that treating Appellee's response as a motion was patently unfair. Because Appellee had not moved for child support prior to the decree, the circuit court erred in granting child support retroactively.

VI. PROPERTY VALUATION

A. LOWE'S HOME CENTERS, LLC v. FLOYD ARNOLD, MONTGOMERY COUNTY PROPERTY VALUATION ADMINISTRATOR, ET AL. (Ky. App. 2025).

2024-CA-0307-MR 8/22/2025 2025 WL 2423322

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

Appellant, Lowe's Home Centers, L.L.C. ("Lowe's"), seeks reversal of a judgment of the Montgomery Circuit Court affirming a final order of the Appellee, the Kentucky Claims Commission, Board of Tax Appeals (the "Board"), which also upheld the assessment of Lowe's property by the Montgomery County Property Valuation Administrator (the "PVA"). After thorough review and careful consideration, the Court finds that as a matter of procedure, the Board conflated the parties' burdens and misapplied the presumption of validity as to the PVA's assessment, failing to account for competent rebuttal evidence, and the Circuit Court failed to address that error. Further, and substantively, the Court holds that the Board's ultimate decision to uphold the assessment was based upon an incorrect standard and was not supported by substantial, compelling evidence.

Both parties agreed that the PVA's continued use of 2008 values of the then-brand-new building for 2020 assessments over a decade later was improper. The Court further determines that the Board's rejection of Lowe's evidence of comparable sale values, and the Board's uncritical adoption of the PVA's evidence of hypothetical leased values without any adjustments was not based upon competent or substantial evidence. Rather, because the PVA's expert relied on inapplicable and inaccurate methodologies and assumptions, and Lowe's expert based her opinions on true comparables in the open free market as Kentucky law requires, the Court concludes that the evidence compelled a finding in Lowe's favor. Hence, we reverse and remand with directions for the Board to adopt the assessment valuation supported by Lowe's expert.