PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
DECEMBER 1, 2024 to DECEMBER 31, 2024

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. CRIMINAL LAW

A. TAYLOR CLARK v. COMMONWEALTH OF KENTUCKY (Ky. App. 2024).

2024-CA-0502-MR 12/13/2024 2024 WL 5099073

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

The Appellant sought, and the circuit court denied, expungement of his original First-Degree Rape and misdemeanor conviction resulting from the amendment of that charge to Attempted Sexual Misconduct. The issue before this Court is whether an original felony charge, a misdemeanor conviction resulting from an amendment of that felony charge, or both may be expunged.

First, the Commonwealth asks this Court to dismiss this appeal as the Appellant untimely filed his Motion to Alter, Amend, or Vacate the circuit court's original denial of expungement. However, this Court found that the Commonwealth waived any objection to the lateness of the motion and the Commonwealth never brought the lateness of the motion to the attention of the circuit court. Instead, the Commonwealth responded to the merits of the motion and participated in an oral argument but did not object to the late motion verbally or in writing. Therefore, the Commonwealth waived the lack of particular case jurisdiction in these circumstances and did not give the circuit court the opportunity to decide any questions about the nature and timeliness of the motion.

Next, it is recognized that the matter of expungement has been addressed piecemeal over the years by our Legislature, and provisions in one chapter are not necessarily applicable in a different context in another chapter. In this case, two statutes apply to the Appellant's expungement request. KRS 431.076 generally deals with expungement of charges of which a defendant may have been acquitted, or when the charges are dismissed with or without prejudice. However, this statute places a limitation in that the dismissal of a charge may not be "in exchange for a guilty plea to another charge." KRS 431.078 governs dismissal of misdemeanor convictions, prohibits expungement of a

"sex offense," and does not allow expungement of a conviction which may serve to increase the penalty for a second or subsequent offense.

The original rape charge in this case was not dismissed, but amended, in exchange for the Appellant's pleading guilty to the amended charge of Attempted Sexual Misconduct. As a result, the original charge cannot be expunged pursuant to KRS 431.076. Furthermore, this Court concluded the Attempted Sexual Misconduct conviction cannot be expunged regardless of the status of the original rape charge, determining it is a sex offense under KRS 431.078 as it has a sexual component, the Appellant admitted to sexual intercourse and pled guilty to Attempt Sexual Misconduct. Although the Legislature has indicted an intent that the phrase "sex offense" is to be given a broad definition, the Appellant committed a misdemeanor sex offense as contemplated by KRS 431.078. Thus, the conviction is not eligible for expungement. The order of the circuit court is affirmed.

II. IMMUNITY

A. BURL W. EVERMAN, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES AS A DEPUTY FOR THE BATH COUNTY SHERIFF'S DEPARTMENT, ET AL. v. LESA G. ROBINSON (Ky. App. 2024).

2023-CA-1018-MR 12/06/2024 2024 WL 4996419

Opinion Affirming in Part, Reversing in Part, and Remanding by TAYLOR, JUDGE; COMBS, J. (CONCURS) AND L. JONES, J. (CONCURS)
DISCRETIONARY REVIEW GRANTED 09/10/2025

Robinson (Appellee) filed a complaint against Deputy Everman and Sheriff Stewart (Appellants) after she lost control of her motor vehicle and struck Deputy Everman's vehicle, resulting in her suffering significant injuries. Robinson alleged Deputy Everman negligently parked his car when responding to an accident scene, and that Sheriff Stewart may be held vicariously liable for the tortious conduct of his agent, Deputy Everman. This appeal followed the Circuit Court's denying the Appellants' motion for summary judgment to dismiss the negligence action based upon qualified official immunity and sovereign immunity.

To be entitled to qualified official immunity, a public official must have performed a discretionary act, in good faith, and within the official's authority. *Yanero v. Davis,* 65 S.W.3d 510, 522 (Ky. 2001). Additionally, this Court previously held in *Sholar v. Turner,* 664 S.W.3d 719 (Ky. App. 2023), that a police officer's decision concerning where to park their police vehicle at an accident scene constituted a discretionary act. Therefore, this Court concluded the Circuit Court erred by denying summary judgment as Deputy Everman, in his individual capacity, is entitled to qualified official immunity.

In applying the Supreme Court's interpretation of KRS 70.040 in *Jones v. Cross,* 260 S.W.3d 343 (Ky. 2008), this Court concluded Sheriff Stewart, in his official capacity, is shielded from liability by the doctrine of sovereign immunity for his own acts but the office of the sheriff is not shielded from liability for the acts of its deputies, here Deputy Everman. Continuing, this Court explained that KRS 70.040 constitutes a legislative waiver of the sovereign immunity traditionally enjoyed by a sheriff at common law; as a result, the office of the sheriff is liable for the acts and omissions of its deputies, but not the sheriff individually. *Jones,* 260 S.W.3d at 346. Likewise, Deputy Everman is not entitled to the protection of sovereign immunity in his official capacity as a deputy sheriff. This Court concluded that any liability in Deputy Everman's official capacity is moot, given the conclusion that he is entitled to qualified official immunity in his personal capacity.

On remand, this Court concluded Deputy Everman shall be dismissed as a party, and the case may proceed against the office of the sheriff only as provided for in KRS 70.040. Sheriff Stewart has sovereign immunity against any claims in his personal capacity and shall not be held personally liable for any claims asserted in this case.

III. NEGLIGENCE

A. MARY MULLINS, INDIVIDUALLY AND AS ADMINSTRATOR OF THE ESTATE OF BILLY MULLINS v. APPALACHIAN REGIONAL HEALTHCARE, INC. D/B/A HAZARD ARH, ET AL. (Ky. App. 2024).

2023-CA-1490-MR 12/06/2024 2024 WL 4996461

Opinion Affirming in Part, Reversing in Part, and Remanding by EASTON, JUDGE; COMBS, J. (CONCURS) AND CETRULO, J. (CONCURS)

The Appellant brought suit individually and in capacity as administrator of the decedent's estate, alleging medical negligence resulting in death. The Circuit Court granted summary judgment to the Appellee medical providers after concluding the Appellant failed to produce adequate expert testimony demonstrating evidence of medical negligence. At the time of summary judgment, nine individual medical practitioners and one hospital were named as defendants. This Court affirmed summary judgment as to seven of the Appellees but reversed and remanded for further proceedings as to three Appellees.

At issue on appeal is the adequacy of the opinions produced by the Appellant's experts. To prove liability, it must be shown that each defendant violated the standard of care, and such violation caused the injuries. However, general statements of a violation of

standards of care without reference to any individual medical practitioner by name or by specialty are insufficient. Thus, to survive a summary judgment motion by each defendant, the Appellant needed to disclose expert testimony specific to each defendant.

This Court affirmed summary judgment as to seven of the Appellees, explaining that without more particularized statements having been made, the seven Appellees were entitled to summary judgment because the Appellant was unable to raise a genuine issue of material fact against them. However, this Court reversed summary judgment, and remanded for further proceedings, as to the remaining three Appellees after concluding one of the expert reports did provide and note particular actions sufficient to create a genuine issue of material fact believed to be violations of the applicable standard of care.