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

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. ARBITRATION

A. LP LOUISVILLE QUINN DRIVE, LLC D/B/A SIGNATURE HEALTHCARE AT ROCKFORD REHAB AND WELLNESS CENTER, ET AL. v. BARBARA LEONARD-RAY, AS ADMINISTRATRIX OF THE ESTATE OF ROCKFORD SMITH (Ky. App. 2025).

2023-CA-1338-MR 1/10/2025 2025 WL 63353

Opinion Reversing and Remanding by KAREM, JUDGE; COMBS, J. (CONCURS) AND CALDWELL, J. (DISSENTS AND FILES SEPARATE OPINION)

A resident of a long-term care facility was admitted following the execution of admission documents by his sister who held his Power of Attorney. An agreement to arbitrate was required for the resident's admission and was signed by his sister. The resident was discharged after several months. Less than one year later, the resident was re-admitted to the facility. The admission documents for the second admission were initialled by the resident himself, including the agreement to arbitrate.

Following the resident's death while in the care of the facility, his estate filed suit alleging negligence and wrongful death. Subsequently, the facility filed a motion to compel arbitration. The trial court denied the motion finding that the arbitration agreement signed upon the resident's first admission was no longer in effect. She further found that the resident's initials on the second agreement were not a "valid indication of assent" on behalf of the resident. The facility appealed.

The Court reversed the trial court finding the first agreement was still in effect at the time of the resident's death. The presentation of the second arbitration agreement was not a novation of the first. Thus, an examination of the details regarding the execution of the second agreement was unnecessary. The trial court was ordered to dismiss the complaint and enter an order compelling arbitration.

II. FAMILY

A. JESSICA ALLGEIER v. JEFFREY WAGNER (Ky. App. 2025).

2024-CA-0496-MR 1/17/2025 2025 WL 223479

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

This case arose from a dissolution of marriage. After entry of the order of dissolution by the Jefferson Family Court, Allgeier filed a civil lawsuit against her former spouse (Wagner) in Jefferson Circuit Court. She sought recovery of damages based on her allegations of Wagner's various torts committed against her, including: misappropriation of revenue from a business awarded to her in the property settlement, malicious interference with her exercise of custody with their children, and the tort of outrage in connection with these claims. Wagner filed a motion to dismiss, which the circuit court granted.

In our review, we determined that the circuit court correctly determined that jurisdiction of these matter should lie with the Jefferson Family Court because Allgeier's complaint involved claims arising from the former marriage. We affirmed that portion of the judgment.

However, the circuit court dismissed the complaint in granting Wagner's motion to dismiss. We held that procedurally, the proper ruling would be transfer of the matter to the Family Court rather than dismissal. Accordingly, we reversed the order of dismissal and remanded for entry of an order transferring the case to the Jefferson Family Court.

III. PREEMPTION

A. WYATT LEDFORD v, UOFL HEALTH-LOUISVILLE, INC., ET AL (Ky. App. 2025).

2024-CA-0022-MR 1/31/2025 2025 WL 349539

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

Ledford brought suit for common law invasion of privacy and negligence claims against UofL Health. The Jefferson Circuit Court determined that the claims were preempted by the Health Insurance Portability and Accountability Act (HIPPA), and granted UofL's motion for judgment on the pleadings and dismissed Ledford's claims.

While there is no private cause of action under HIPAA, that does not mean that HIPAA prohibits common-law tort claims based on the wrongful release of confidential medical information. HIPAA contains an express preemption clause, however where the state law is contrary to HIPAA, HIPAA will not supersede it so long as the state law is more stringent than HIPAA. State law and HIPAA can coexist.

Kentucky's common law tort for invasion of privacy is consistent and in harmony with HIPAA insomuch as it would prevent disclosure of private medical information without cause. Additionally, assuming that Kentucky's common law recognizes a negligence cause of action arising from breach of patient privacy, such a cause of action is not contrary to HIPAA. In sum, to the extent such claims exist and are factually viable, they are not preempted by HIPAA. The order of the Jefferson Circuit Court is reversed and remanded.

IV. PRODUCT LIABILITY

A. DANIEL BAUER, ADMINISTRATOR FOR THE ESTATE OF SANDRA BAUER, ET AL. v. HYUNDAI MOTOR AMERICA, INC., ET AL (Ky. App. 2025).

2022-CA-0649-MR 1/10/2025 2024 WL 4795941
2022-CA-0737-MR

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

After a severe vehicle accident, members of the Bauer family (Appellants) brought action against Hyundai Motor, alleging certain manufacturing defects in the 2013 Hyundai Tucson driven by Sandra Bauer contributed to the injuries sustained by its five occupants, three of whom died as a result. The Bauer family contended that the front bumper welds were too short, and this product defect contributed to the severe injuries sustained. The jury returned a verdict for Hyundai, and the trial court entered a final judgment in accordance thereto. This appeal followed after the trial court denied the Bauer family's CR 59.01 motion for a new trial. Hyundai filed a cross-appeal, which was rendered moot. This Court affirmed the trial court's judgment.

First, the Appellants allege Hyundai committed misconduct during discovery. This Court concluded the trial court was not provided a timely opportunity to consider discovery misconduct as the issue was raised for the first time in a post-judgment motion. Thus, this Court did not consider whether the trial court erred.

Second, the Appellants allege the trial court erred in permitting the introduction of Bates Numbered Document (Bates No.) 976 through the testimony of a fact witness. Hyundai

sought to admit Bates No. 976 for the purpose of proving the proper length of the front bumper welds and that they were only required to be 30 millimeters in length. This Court concluded KRE 106 did not authorize admission of Bates No. 976 into evidence; moreover, it cannot be concluded that the document was improperly admitted into evidence under KRE 803(6) and KRE 901(a). Any error in admitting Bates No. 976 or the fact witness's testimony would not warrant granting a motion for a new trial because the argument did not rest entirely on the fact witness's testimony.

Third, the Appellants allege there was insufficient evidence to support the jury's determination that the welds were not defective. This Court concluded the Appellant's argument regarding insufficiency of evidence fails because it improperly shifts the plaintiffs' burden at trial, and that Hyundai presented significant evidence to the jury indicating that the product was not defective. This Court affirmed the judgment of the trial court in denying the Appellants' CR 59.01 motion on all three issues raised.