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

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I. CRIMINAL

A. ***TRENTON LEE DIXON v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025)***

2024-CA-0944-MR 7/18/2025 2025 WL 2006131

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

The Court affirmed the Appellant's conviction and sentence noting Appellant's vacillation between private and public counsel throughout the case. The Court rejected Appellant's unpreserved claim challenging the imposition of fines where Appellant previously retained private counsel, claimed that he could afford counsel, failed to object to the Trial Court's imposition of fines at the sentencing stage, and did not request or obtain the Trial Court's determination of his "poor person" status. The Court clarified that eligibility for Court-appointed counsel during some proceedings does not establish blanket indigency under KRS 534.040(4) such as to cause an automatic waiver of fines. Appellant was also not entitled to a last-minute continuance of the trial to obtain yet another new counsel where he had failed to secure new private counsel despite his repeated assurances, and his request contradicted his own adamant objections to continuances. Further, Appellant was not entitled to a mistrial due to admission of improper KRE 404(b) evidence, as the victim's testimony regarding past general conduct did not refer to a specific instance of abuse. The Court also held that the Commonwealth's voir dire statements were not improper.

B. ***NICKOLAS OSCAR GENO v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025)***

2023-CA-1368-MR 7/18/2025 2025 WL 2005952

Opinion Reversing and Remanding by L. JONES, JUDGE; ACREE, J. (CONCURS) AND MCNEILL, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 06/17/2026

Geno was convicted in Graves Circuit Court of sexual abuse in the first degree and sentenced to five years' imprisonment. Geno asserts a preserved error that the trial court should not have allowed the Commonwealth to present evidence of Geno's prior indecent exposure convictions. Geno requests palpable error review for the trial court's improper admission of evidence that he was "controlling" and "narcissistic" and that the victim's sister believed he killed her dog. Alternatively, Geno requests reversal for cumulative error. Geno's conviction is reversed because the two prior convictions of indecent exposure did not satisfy the exceptions within KRE 404(b) and unduly prejudice the jury.

The two indecent exposure convictions arose from two separate incidents involving two different women who neither knew Geno nor knew each other. Utilizing the three-step evaluation for admission of evidence outlined in *Bell v. Commonwealth*, 874 S.W.2d 882, 889 (Ky. 1994), the convictions were not relevant, were probative, but were more prejudicial than probative in the trial for the present charge. The factual basis underlying the two prior convictions were not so peculiar as to satisfy the requirements for modus operandi that they be reasonably attributed to Geno for purposes of identification. Additionally, the convictions were not sufficient to show lack of mistake – Geno did not claim that he accidentally performed the acts that are the basis for the present charge, rather he denied the occurrence at all. Therefore, the prior convictions did not meet the relevancy exceptions permitted in KRE 404(b). Secondly, as Geno entered guilty pleas for the prior convictions, they were probative in the context of the second prong, as Geno acknowledged that he was the perpetrator of those acts. Lastly, however, the trial court made only the conclusory statement in its ruling that the probative value of the prior convictions outweighs the prejudicial effect, but on review, the prejudicial effect substantially outweighs the probative value. It was clear from the language of the trial court's order admitting the evidence that the trial court, even as a learned professional, had difficulty preventing the prior convictions from unduly prejudicing his view of Geno's innocence until proven guilty, and such difficulty would only be exacerbated by the jury.

C. JT HIGGINS v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025)

2023-CA-1327-MR 7/18/2025 2025 WL 2005373

Opinion Reversing and Remanding by CALDWELL, JUDGE; L. JONES, J. (CONCURS AND FILES SEPARATE OPINION) AND EASTON, J. (DISSENTS AND FILES SEPARATE OPINION)

DISCRETIONARY REVIEW GRANTED 03/11/2026

Higgins pled guilty in Henderson Circuit Court of complicity to second-degree robbery and was sentenced to seven years' imprisonment. Two months later, the trial court granted Higgins's motion for shock probation and entered an order suspending further execution of his sentence and placed him on probation for seven years. More than five years into his probation, Higgins was arrested in Hopkins County for multiple felony offenses and his probation was revoked. Higgins asserts that the order placing him on seven years of probation was an illegal sentence, in violation of KRS 533.020(4), for

which he filed a CR 60.02 motion. Higgins now seeks review of the denial of his CR 60.02 motion, arguing that the trial court abused its discretion by denying his CR 60.02 motion in the face of an illegal sentence of probation.

KRS 533.020(4) sets forth a limitation of five years for probation of sentences, or a reasonable amount of time for restitution to be paid, whichever is later. A court may extend a defendant's probation for longer than five years under certain circumstances that may arise as the probation continues, however, it may not as an initial matter sentence a probation period greater than five years from the outset if restitution is not an issue. To do such would be a clear violation of the statute and of the separation of powers. That the defendant consented to the seven-year probation is of no consequence – it is still an illegal sentence.

II. INSURANCE LAW

A. KENTUCKY ASSOCIATION OF COUNTIES ALL LINES FUND (KALF) V. CITY OF SOMERSET, ET AL. (Ky. App. 2025)

2024-CA-0426-MR 7/11/2025 2025 WL 1909349

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

****Discretionary review granted 8/12/2026****

This appeal arises out of the Pulaski Circuit Court's order dismissing KALF's complaint with prejudice and denying Somerset's request for attorneys' fees. The case involved a single-vehicle collision of a firetruck, jointly owned by Pulaski County and the City of Somerset, into a building while firefighters were performing maintenance on the firetruck at the fire station. Though KALF paid for the total loss of the firetruck and the damages to the non-fire station victims, KALF sought subrogation from the City of Somerset for all payments, arguing that their firefighters caused the damage and were not covered by the policy because the maintenance performed when the accident occurred did not constitute "use" of the firetruck. Maintenance performed on the firetruck must be considered use of the firetruck, and therefore the City of Somerset and the other listed parties were "insureds" under the policy.

The City of Somerset also cross-appealed the Pulaski Circuit Court's denial of attorneys' fees. The insurance policy at issue in this case contains a Duty to Defend Provision which provides that the City of Somerset is entitled to attorneys' fees to be paid by KALF in its defense that it was a putative insured. As the City of Somerset was contractually entitled to attorneys' fees, the order denying attorneys' fees is reversed and remanded back to the circuit court to award the amount in attorneys' fees that it deems reasonable.

III. PROCEDURE

A. ***KENTUCKY BLUEGRASS EXPERIENCE RESORT, ANDREW HOPEWELL, AND JOEY SVEC v. WOODFORD COUNTY BOARD OF ADJUSTMENTS; CITY OF MIDWAY (Ky. App. 2025)***

2023-CA-0877-MR 7/3/2025 2025 WL 1829532

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

The Appellant, Kentucky Bluegrass Experience Resort (KBER) petitioned the trial court for a declaration of rights against the Appellee, City of Midway (Midway). Appellant sought to compel Midway to provide sewer services to its property, which was outside Midway's municipal boundaries, so Appellant could construct a recreational vehicle (RV) park in a zone marked for agriculture. Obtaining city sewer service was mandatory under the terms of a conditional use permit issued by the Woodford County Board of Adjustments in order for the RV park project to proceed. After a public hearing in which many local residents expressed opposition based on the size and scope of the proposed RV park, Midway denied sewer service to Appellant.

In a direct appeal from the trial court's order granting Midway's motion to dismiss, the Court of Appeals affirmed. Appellant presented five arguments on appeal, arguing: (1) Midway, as a public utility, discriminated against Appellant with respect to rates and services; (2) Midway violated KRS 96.910 and KRS 96.539 by its failure to provide sanitary sewer services; (3) Midway was estopped from denying sewer services to Appellant; (4) Midway waived its right to deny sanitary sewer services by providing them to Appellant's neighbors; and (5) the trial court erroneously denied Appellant an opportunity to amend its complaint to cure deficiencies

The Court of Appeals rejected Appellant's arguments. First, our precedents establish that the extension of utility services is a discretionary matter for a city, and the Kentucky Supreme Court has held that "[t]he judiciary should not second-guess the judgment of local government officials." *Commonwealth v. Jameson*, 215 S.W.3d 9, 35 (Ky. 2006). Second, the statutes cited by Appellant do not create an affirmative obligation on the part of the city to provide sewer services outside its boundary. Third, equitable estoppel only applies to a governmental entity under exceptional circumstances, and Appellant could not show how the mayor's initial support for the project could reasonably be said to bind the votes of Midway's city council. Fourth, Appellant could not demonstrate how Midway has relinquished a known right by choosing when to provide services. Fifth, and finally, the trial court did not erroneously deny Appellant the opportunity to amend its complaint because Appellant never actually requested leave to amend its complaint during the proceedings, and thus the trial court was never actually called upon to make a ruling. A nonruling by the trial court is not reviewable at the appellate level. *Jones v. Livesay*, 551 S.W.3d 47, 52 (Ky. App. 2018).

Finally, the Court of Appeals reaffirmed that the courts are not at liberty to second-guess the actions of local government officials without some showing that the actions were arbitrary. Using the test for arbitrariness outlined in *Hilltop Basic Resources, Inc. v. County of Boone*, 180 S.W.3d 464, 467 (Ky. 2005), we held that Midway was within its granted powers in denying the request for services, and Appellant was afforded procedural due process by its participation in the public hearings leading up to Midway's decision. The third and final element of the test asks whether Midway's decision was supported by substantial evidence, and this element was met by the opposing testimony of residents evinced during the public hearings.

B. ANTHONY K. DALE v. JENNIFER D. TIPTON (Ky. App. 2025)

2024-CA-0298-MR 7/3/2025 2025 WL 1850881

Opinion Affirming by LAMBERT, JUDGE; ACREE, J. (CONCURS) AND CALDWELL, J. (CONCURS IN RESULT ONLY)

Appeal from a summary judgment dismissing the plaintiff's personal injury claim against the defendant as untimely pursuant to KRS 304.39-230(6). The plaintiff relied upon his carrier's PIP log to calculate when the two-year statute of limitations began to run. However, the PIP log did not indicate that the last payment was in fact a replacement payment for a lost check issued prior to the exhaustion of his PIP benefits, even though this was not indicated in the "replacement check" column. This Court affirmed, holding that KRS 304.39-230(6) does not reference a PIP log but provides that the statute of limitations runs from the date of the last PIP payment and that a replacement payment does not extend the date beyond the date of the original payment, which meant that the plaintiff did not timely file his complaint. This Court also rejected the plaintiff's equitable tolling and estoppel arguments because he could not establish that extraordinary circumstances prevented the timely filing of the complaint. He received a letter from his carrier informing him that his PIP benefits were exhausted in October 2017, and his counsel obtained medical records and bills that would have revealed that a duplicate payment had been issued. There was also no indication that the defendant knew of the alleged misrepresentation on the PIP log or was aware of and concealed this from the plaintiff.

C. BRANDY LAWRENCE BARRETT v. ADMINISTRATIVE OFFICE OF THE COURTS AND KENTUCKY PERSONNEL BOARD (Ky. App. 2025)

2024-CA-0986-MR 7/18/2025 2025 WL 2004968

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

In a direct appeal from the trial court's order affirming a decision of the Personnel Board, the Court of Appeals affirmed. Appellant, a former employee of the Administrative Office of the Courts (AOC) contested the termination of her employment at that agency. She appealed her termination to the Personnel Board, alleging retaliatory discharge. However, after AOC made a special appearance, the hearing officer agreed with AOC that the Personnel Board lacked jurisdiction and dismissed the appeal. The Personnel Board adopted the hearing officer's recommendation, and the trial court affirmed.

In affirming the trial court, the Court of Appeals held that the key factor is that Appellant was employed by the judicial branch. AOC, as a judicial branch agency, is excluded from the Personnel Board's jurisdiction as a constitutional matter because the Personnel Board is an agency of the executive branch. Personnel decisions within the judicial branch are not subject to legislative control or executive oversight, as the Kentucky Supreme Court "has *exclusive* jurisdiction over the agencies and personnel under its control." *Arkk Properties, LLC v. Cameron*, 681 S.W.3d 133, 139 (Ky. 2023) (emphasis added). For this reason, the Court of Appeals determined the trial court had correctly applied the law and affirmed.

D. COMMONWEALTH OF KENTUCKY v. GARY CAMPBELL (Ky. App. 2025)

2024-CA-0429-MR 7/25/2025 2025 WL 2087474

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

****Discretionary review granted 8/12/2026****

This is an appeal by the Commonwealth of a Graves Circuit Court order denying its motion to proffer expert testimony (pertaining to a child victim's delay in disclosing sexual abuse) during the Commonwealth's case-in-chief. The circuit court held a *Daubert* hearing but excluded the expert testimony without first determining the reliability of the science/research into delayed disclosure by child victims of sexual assault. Despite this error, we held that the trial court properly concluded that Kentucky caselaw prohibits such testimony during the Commonwealth's case-in-chief. Our precedent has established that such testimony is inadmissible to show the existence of abuse and/or the guilt of the defendant. However, precedent may allow for such testimony to be admitted on rebuttal if verified through a *Daubert* analysis and if presented to rebut a claim by the defendant that the child's delay in disclosing the abuse was indicative of deceit. Consequently, the matter was remanded for *Daubert* findings (if the Commonwealth attempts to admit the expert testimony during rebuttal within the guidelines specified) and trial.