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

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I. FAMILY LAW

A. PAUL MITCHELL YORK, ET AL. v. SHAWN D. HAMLET, ET AL. (Ky. App. 2026).

2024-CA-1406-MR 6/05/2026 2026 WL 1616086

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

The Appellant grandparents appealed the order of the successor family court judge which dismissed their petition seeking de facto custodian status and custody of their grandchild. The Appellants argued the successor family court judge lacked authority to revisit an earlier interlocutory finding by a prior special judge which determined that they qualified for de facto custodian status. In the alternative, they argued the family court's final judgment is not supported by substantial evidence.

The Court of Appeals affirmed the family court's final judgment. First, the Court considered and rejected the Appellants' argument that the successor family court judge lacked authority, holding that trial courts always have the ability to revise interlocutory decisions prior to their finality under CR 54.02. In this instance, the record reflected that the prior special judge's decision was not in an order made final by operation of CR 54.02, and it was thus subject to revision by the successor family court judge.

Second, the Court of Appeals considered and rejected the Appellants' argument that the family court's final judgment denying de facto custodianship was not supported by substantial evidence. The record reflects that, while the Appellants were a significant source of support for the child, there was also evidence supporting the Appellee father's position that he did not relinquish or abandon his parental role. There was also testimony that the Appellee father was consulted by Appellant grandparents regarding significant decisions involving the child's care. The presence of conflicting testimony regarding the child's care meant that the successor family court judge, acting as the factfinder, was entitled to weigh the competing testimony and resolve the dispute, and the Court of Appeals will not substitute its judgment in such instances.

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

2025-CA-1265-ME 6/12/2026 2026 WL 1722320
2025-CA-1267-ME

Opinion Reversing and Remanding by ECKERLE, JUDGE; EASTON, J. (CONCURS) AND MCNEILL, J. (CONCURS)

In January of 2025, Appellee, the Cabinet for Health and Family Services ("the Cabinet") filed dependency, neglect, and abuse ("DNA") petitions regarding minor children, C.S. ("Child") and C.S. ("Brother"), after receiving a report that joint Appellants, A.S. ("Mother") and T.S. ("Father"), had sexually abused Child. The DNA petitions were based on statements that Child had made about the alleged abuse to a guidance counselor at her school and a forensic interviewer with the Children's Advocacy Center of Kentucky ("CACK"). During the adjudicative hearing, the Family Court had attempted to take in-camera testimony directly from Child. However, Child was unable to give intelligible answers to foundational questions posed by the presiding Trial Judge and the Child's Guardian ad Litem ("GAL"), including whether Child knew the differences between truths and lies. The Family Court determined Child to be incompetent to testify. The Cabinet also called Child's guidance counselor and the CACK interviewer who conducted Child's forensic interview as witnesses, both of whom testified about the statements of the alleged sexual abuse that Child had made to them. Over the objections to hearsay posed by Appellants' counsel, the Family Court allowed the testimony about Child's statements to be admitted. The Family Court specifically ruled that the statement made to the guidance counselor was admissible as an excited utterance exception and the statement made to the CACK interviewer was admissible under Kentucky Rule of Evidence ("KRE") 804A, as Child was unavailable to testify due to her incompetence, and the statement to the guidance counselor served as corroborating evidence. Based solely on those two hearsay statements, the Family Court found Child to have been sexually abused by Appellants, and that Brother was at risk of abuse. Mother and Father appealed after a final dispositional order was entered. Notably, the Cabinet failed to file a response brief, but the GAL filed a brief in agreement with the Appellants.

The Court of Appeals reversed and remanded. The Court specifically held that the Family Court erred in failing to consider Child's testimonial incompetence as an obstacle for her statement to the guidance counselor to be admitted under B.B. v. Commonwealth, 226 S.W.3d 47, 51 (Ky. 2007), especially in light of other factors that weighed against the statement's admittance, including the lack of a timeframe for the alleged abuse and Child's generally excitable emotional state. The Court further held, notwithstanding the Kentucky Supreme Court's declining to adopt KRE 804A as enacted in 2018, that the Family Court also erred in allowing Child's statement to the CACK interviewer to be admitted under KRE 804A because of the Family Court's failure to consider Child's testimonial incompetence as a factor weighing against admittance;

inappropriate inference to the truthfulness of Child's statement based on the CACK interviewer's experience and credentials, especially as she was not called as an expert witness and not entitled to offer opinion testimony; and the improper determination that Child's statement to the guidance counselor served as corroborating evidence, as the same hearsay statement made at different times cannot corroborate itself.

C. ANICA M. YELTON v. WILLIAM R. YELTON (Ky. App. 2026).

2025-CA-0723-MR 6/18/2026 2026 WL 1752369

Opinion and Order Affirming in part, Vacating in part, and Remanding by ECKERLE, JUDGE; EASTON, J. (CONCURS) AND MCNEILL, J. (CONCURS)

In a dissolution of marriage action, Wife claimed that a bar that Husband owned prior to marriage had increased in value during the marriage, that increase was a marital asset due to the parties' joint efforts during the marriage, and that she was thus entitled to receive a just share of the marital increase. The Court was unpersuaded because the undisputed testimony at trial showed that the bar's value had decreased during the marriage. The Court also discounted Wife's claim that Husband had gifted her an ownership interest in the bar because she had not presented evidence that, for example, Husband made Wife a record title owner of the bar or allowed her to hire or fire bar employees.

Regarding the sale of the marital residence, the Court vacated the Family Court's findings and conclusions distributing proceeds. Both Husband and Wife claimed to have expended nonmarital funds towards building the marital residence, but the Family Court had improperly declined to apply mandatory tracing principles to determine whether either party had demonstrated a nonmarital ownership interest. The Family Court had also used internally inconsistent sums when determining Wife's and Husband's nonmarital contributions, and it had failed to account for Wife's uncontested, nonmarital contribution.

As to a checking account owned by Wife alone at the time of the marriage, but to which she had later added Husband, Wife failed to trace the nonmarital funds on the wedding day to presently-held assets. While Wife's argument was consistent with our holding in Allen v. Allen, 584 S.W.2d 599 (Ky. App. 1979), in Chenault v. Chenault, 799 S.W.2d 575, 578-79 (Ky. 1990), our Supreme Court explicitly declined to adopt the Allen approach, and so it is unclear if Allen retains any precedential value. Regardless, and unlike Allen, the balance in the account at issue had sometimes fallen below the balance on the parties' wedding day, which is the determinative factor.

The Court affirmed the Family Court's conclusion that Wife should be responsible for half of the tax debt stemming from Husband's withdrawal of funds from his nonmarital retirement account. The evidence showed that the tax debt was jointly incurred to

further the parties' joint interest in building a marital residence and thus was a marital debt. The Court also rejected Wife's argument that Husband should receive credit for only the reduction in the principal owed on her nonmarital residence via expenditure of marital funds, not a dollar-for-dollar credit for the expended marital funds.

The Court declined to be the first Court to address whether Wife was entitled to attorney's fees incurred in discovery disputes. The Court remanded the issue to the Family Court to make an initial decision because appellate courts are not factfinders.

Finally, the Court rejected Wife's argument that the Family Court had rotely adopted a proposed judgment tendered by Husband. The final judgment issued by the Family Court was similar to Husband's tendered judgment, but a side-by-side comparison of the two judgments showed that the Family Court had made several substantive amendments to Husband's tendered judgment.

II. CIVIL LAW

A. FIELD & MAIN BANK, INC. F/K/A OHIO VALLEY FINANCIAL GROUP, INC., SUCCESSOR BY MERGER AND F/K/A OHIO VALLEY BANK, INC., SUCCESSOR BY CONVERSION TO OHIO VALLEY NATIONAL BANK OF HENDERSON v. COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS. (Ky. App. 2026).

2025-CA-0216-MR 6/05/2026 2026 WL 1615915

Opinion Dismissing Appeal and Remanding by EASTON, JUDGE; CALDWELL, J. (CONCURS) AND COMBS, J. (CONCURS)

This is an appeal of a circuit court decision granting Appellee Commonwealth of Kentucky Transportation Cabinet's (KYTC) motion to amend its condemnation petition years after the circuit court entered the appealable (but not appealed) Interlocutory Order and Judgment. KYTC was redesigning and constructing a roadway. For one of the roundabouts to be built at the edge of Appellant Bank's property, originally, KYTC sought 82 square feet in fee simple in addition to 657 square feet as a temporary easement. However, KYTC amended to reduce the taking from a fee simple interest to a temporary easement for all 739 square feet. Bank appealed arguing that the motion for leave to amend the petition was untimely.

This appeal raises two important procedural questions of first impression. First, what is the proper procedure when the condemnor ultimately decides to take a lesser interest after the right to take the property has been determined. Second, what is the proper procedure when a condemnee claims an inverse taking has occurred, not because of the property which is the subject of the petition, but because of traffic flow changes from the larger project involving other properties.

As to the first question, the condemnation process starts with a right to take followed by possession. The taking process is not completed until compensation is decided. The

interlocutory order determined KYTC's right to take, not what was to ultimately be taken. Once an interlocutory judgment establishes the right to take, this determination is final and immediately appealable. A later amendment that lessens the interest affects only compensation and does not reopen the right to take phase. The Court dismissed the Bank's challenge of the right to take as Bank failed to challenge the right to take within 30 days; therefore, it lost the right to appeal.

As to the second question, when a condemnee believes the overall project has caused an inverse taking, the proper procedure to make this claim is to file a counterclaim. Bank did not file a counterclaim or file a separate suit for the purposes of compensation. On remand the circuit court may be called upon to determine whether an omitted counterclaim should be allowed under CR 13.08. In this analysis, the fact that Bank has consistently argued about a total taking shows that KYTC has clearly had notice of the claim. In any event, the question of lack of reasonable access must be evaluated as a matter of law. The Court ruled the appeal be dismissed and remanded.

B. ABRAM SCOTT ADKINS v. LAZARUS COAL, LLC (Ky. App. 2026).

2025-CA-0294-MR 6/12/2026 2026 WL 1721453
2025-CA-0320-MR

Opinion Affirming in part, Vacating in part, and Remanding by CALDWELL, JUDGE; THOMPSON, C. J. (CONCURS) AND A. JONES, J. (CONCURS)

This appeal challenged a jury verdict in favor of Adkins in his workers' compensation retaliation claim and a cross-appeal from Adkins challenged the amount set by the trial court for attorney's fees, asserting the court failed to award a reasonable amount.

Lazarus Coal, at trial, had moved for a JNOV arguing that Adkins had failed to offer proof that he had engaged in a protected activity or that Lazarus Coal had knowledge of his engaging in a protected activity prior to the adverse employment action, which they did not dispute occurring. In this action, while Adkins had not formally filed a workers' compensation claim before being laid off, he had made a report of the injury to Lazarus Coal and believed that Lazarus Coal was pursuing the claim for him. Further, Lazarus Coal personnel admitted to being aware that Adkins was pursuing workers' compensation medical benefits.

Lazarus Coal also argues that they could not know Adkins was pursuing workers' compensation benefits because he returned to work immediately after seeing a doctor. While Adkins did return to work the same day, he was restricted to light duty. Further, Lazarus Coal claims it could not have known Adkins was pursuing a claim as he did not even miss a whole day of work, citing KRS 342.197(1). However, while KRS imposes a duty for employees to report a work-related injury to the Department of Workers' Claims only if an employee misses more than one day of work, there is not an express severity requirement for an employee to be able pursue a workers' compensation claim.

Adkins sought attorneys' fees of $51,000 based on a lodestar calculation based on hours expended at a proposed rate. The trial court awarded only $8,000 in fees, the same amount the jury awarded for lost wages. While there is no previously published Kentucky precedent establishing how a reasonable attorney fee should be calculated in a workers' compensation retaliation case, KRS 341.197(3) is aimed at making sure workers can obtain legal representation to enforce their right to not suffer adverse actions for pursuing workers' compensation claims. We therefor vacated the $8,000 attorney fee award and remanded to the trial court for reconsideration of a reasonable fee, with specific findings about a lodestar figure derived from multiplying reasonable hours by a reasonable rate.

III. CRIMINAL LAW

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

2025-CA-0396-MR 6/18/2026 2026 WL 1752103

Opinion Reversing and Remanding by MCNEILL, JUDGE; EASTON, J. (CONCURS) AND ECKERLE, J. (CONCURS)

Billy Baggett moved to dismiss his indictment for theft by unlawful taking and first-degree criminal mischief due to the Commonwealth's failure to bring him to trial within 180 days of his request for disposition of his charges in violation of the Interstate Agreement on Detainers ("IAD"), Kentucky Revised Statutes 440.450–KRS 440.510. The Commonwealth opposed the motion, claiming that the IAD allows the court to grant a continuance for "good cause." The Commonwealth explained that the previous Commonwealth attorney had failed to complete the necessary paperwork and argued that it should not be held responsible for the previous administration's mistake. The circuit court found good cause and denied the motion. On appeal, this Court reversed, holding that the Commonwealth's simple failure to act within the statutory time limit did not constitute "good cause" for a continuance, considering the IAD's purpose "to encourage the expeditious and orderly disposition of . . . charges[.]" KRS 440.450(Art. I). It also did not matter that the violation resulted from a previous administration's failure to act because the Commonwealth Attorney is merely an agent of the Commonwealth, and it is the Commonwealth who is a party to the IAD and has the duty to comply with its terms.

B. CHRISTIAN DOMINGUEZ v. COMMONWEALTH OF KENTUCKY (Ky. App. 2026).

2025-CA-0043-MR 6/26/2026 2026 WL 1837612

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

The Court of Appeals affirmed an order terminating Christian Dominguez's felony diversion program participation and sentencing him to probation. Dominguez claimed the trial court failed to comply with KRC 439.3106(1). However, the court's order did not incarcerate Dominguez as would have required compliance with section (1). The order imposed a lesser sanction of probation authorized by section (2) which does not require such compliance. The criteria of section (1) are not prerequisites to revocation alone but to the greater sanction of incarceration. Section (2), which applies here, requires that the trial court's choice of a lesser sanction than incarceration balance "the risk of future criminal behavior by the offender [on the one hand], and[, on the other,] the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community." KRS 439.3106(2). The record shows the trial court struck that balance.