

PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
MARCH 1, 2015 to MARCH 31, 2015

I. ADMINISTRATIVE LAW

A. *Downey v. Kentucky Unemployment Insurance Commission*

[2013-CA-002110](#) 03/27/2015 2015 WL 1395905 DR Pending

Opinion by Judge VanMeter; Judges Jones and Maze concurred. The Court of Appeals held that the Kentucky Unemployment Insurance Commission properly denied appellant's request for unemployment benefits. Appellant is a registered nurse who worked full-time at Kindred Nursing Center. Kindred terminated appellant when she refused a work assignment to cover two halls instead of her usual one hall. On appellant's application form for unemployment benefits, she misrepresented the reason for her termination, stating she was "laid off due to lack of work." These statements provided appellant with benefits immediately. Kindred subsequently refuted her statements in its explanation of separation, and upon receiving Kindred's statements, the Commission disqualified appellant from receiving benefits. Though the Commission found that appellant had been improperly discharged for failure to obey instruction since Kindred's instruction was unreasonable, the Commission found that appellant's act of providing a knowingly false statement on her application for benefits disqualified her from receiving benefits. KRS 341.370(2) ("A worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits[.]"). The Court of Appeals agreed that KRS 341.370(2) mandated that appellant be disqualified from receiving unemployment benefits due to her false statement made in order to obtain her benefits.

II. APPEALS

A. *Liquor World of Corbin, LLC v. Commonwealth*

[2013-CA-000003](#) 12/24/2014 2014 WL 7339229 Released for Publication

Opinion by Judge Jones; Chief Judge Acree and Judge Maze concurred. Appellant filed a complaint against the Department of Alcoholic Beverage Control and its administrator for injunctive and declaratory relief, seeking: (1) a declaration that the department could not lawfully issue liquor licenses to three licensees and had to terminate any licenses already issued to them, and (2) an injunction prohibiting the department from issuing the licenses and otherwise continuing to allegedly violate applicable statutes. The circuit court dismissed the complaint. The Court of Appeals then dismissed the subsequent appeal after finding that appellant failed to name indispensable parties - the three licensees - in its notice of appeal.

III. CHILD SUPPORT

A. *Mix v. Petty*

[2014-CA-001470](#) 03/27/2015 2015 WL 1395895 Rehearing Pending

Opinion by Judge J. Lambert; Judges Combs and Stumbo concurred. In an appeal brought by a mother challenging an order terminating the father's child support obligation, the Court of Appeals affirmed in part, reversed in part, and remanded. The mother was homeschooling the child, and she requested that child support continue until the child's 20th birthday when he was scheduled to complete his senior year in high school, pursuant to KRS 403.213(3). The Court reversed the portion of the family court's order terminating child support as of May 30, 2014. KRS 158.050 provides that a school year begins on July 1 and ends on June 30. Therefore, the Court ruled that child support should have continued through June 30, 2014. The Court otherwise affirmed the family court's order and held that the family court did not abuse its discretion in declining to extend the father's child support obligation any further based upon the circumstances of this case, including the lengthy extension of the child's sophomore term.

IV. CRIMINAL LAW

A. *McClure v. Commonwealth*

[2013-CA-002090](#) 03/13/2015 457 S.W.3d 728

Opinion by Judge Maze; Judges Nickell and Stumbo concurred. The Court of Appeals reversed and remanded an order revoking appellant's probation for burglary, theft of a controlled substance, and theft by unlawful taking. Citing to *Commonwealth v. Andrews*, 448 S.W.3d 773 (Ky. 2014), the Court held that because the record was devoid of any express written or oral finding concerning whether appellant could be managed within the community, the circuit court's decision to revoke, in the absence of this finding, constituted an abuse of discretion meriting remand.

B. Northington v. Commonwealth

[2013-CA-000153](#) 03/13/2015 2015 WL 1120319 Released for Publication

Opinion by Judge Jones; Chief Judge Acree and Judge Kramer concurred. Appellant was indicted on charges of assault in the first degree and being a persistent felony offender in the first degree. Thereafter, appellant entered a conditional guilty plea, in which he reserved his right to appeal the circuit court's denials of his pre-trial suppression motions. On appeal, appellant argued that the circuit court erred when it denied his motion to suppress the victim's in-court identification of him while presuming that the pre-trial identification was not suggestive. He further argued that the circuit court erred when it denied his motion to suppress any in-court identification of him by the Commonwealth's other three proposed witnesses. The Court of Appeals affirmed in part, vacated in part, and remanded the case back to the circuit court for an evidentiary hearing. First, the Court held that under the law in effect at the time, the circuit court erred by failing to conduct a suppression hearing for the purpose of resolving a dispute as to whether the initial detective investigating the case presented a photo pack to the victim, and, if so, whether the victim identified his alleged attacker, whether anyone resembling appellant was included in the photographs shown to the victim, and whether another African-American male with appellant's name was included in the photo pack. Second, the Court held that the circuit court's failure to conduct an evidentiary hearing with respect to the in-court identifications of the Commonwealth's other three proposed witnesses was harmless error as there was no allegation that the three witnesses were subjected to any pre-trial identification procedures (suggestive or otherwise).

C. *Samuels v. Commonwealth*

[2012-CA-000341](#) 03/13/2015 2015 WL 1120329 DR Pending

Opinion by Judge Jones; Chief Judge Acree and Judge Maze concurred. This appeal concerned an alleged violation of appellant's Sixth Amendment right to counsel under the U.S. Constitution. Appellant argued that because his alleged victim was represented by an attorney who worked for the same DPA office as his counsel, a conflict of interest existed which violated his Sixth Amendment right to effective counsel. The Court of Appeals held: 1) that any simultaneous representation by counsel during critical phases of criminal proceedings, including pretrial investigating phases, could give rise to a violation; 2) that the victim and appellant had inherently adverse interests such that single counsel could not represent both at the same time even in unrelated matters; and 3) that two different DPA attorneys who did not collaborate with each other could represent adverse interests at appellant's criminal trial without violating appellant's Sixth Amendment right to effective counsel.

V. FAMILY LAW

A. Holt v. Holt

[2014-CA-001535](#) 03/13/2015 2015 WL 1120311 Released for Publication

Opinion by Judge Jones; Judge Dixon concurred; Judge Thompson concurred with the majority opinion via separate opinion. The Court of Appeals affirmed the trial court's entry of domestic violence orders against appellant. The Court held that KRS 403.725(1), (4), and (7) make it clear that in DVO actions, venue is appropriate in both the county where the victim resides (or has fled to) and any county circuit court where ongoing dissolution proceedings involving the same parties are pending. Appellee, a resident of Nelson County, filed his petition for a DVO in Nelson County. This was proper under KRS 403.725(1). However, since there was an ongoing dissolution action pending before the Bullitt Family Court, venue was also appropriate in that court under KRS 403.725(4). After reviewing appellee's petition and having been made aware of the parties' pending dissolution proceedings in Bullitt County, the Nelson District Court determined that venue would be more appropriate in Bullitt County because the family court judge there was already familiar with the parties and their interactions with one another. The Court of Appeals held that this was an appropriate decision as venue was proper in both locations. Next, the Court held that there was sufficient evidence for the trial court to reasonably infer that appellant had previously engaged in acts of domestic violence against appellee and that her conduct caused appellee to fear that appellant would engage in future acts of domestic violence against him. Finally, the Court held that appellant was provided with an adequate DVO hearing under KRS 403.750(1).

VI. MUNICIPAL CORPORATIONS

A. *Campbell County Library Board of Trustees v. Coleman*

[2013-CA-000883](#) 03/20/2015 2015 WL 1263495 DR Pending

Opinion by Judge Taylor; Judges Nickell and Thompson concurred. In separate actions, landowners brought declaratory judgment complaints against the county library board of trustees, alleging that the board improperly increased the library's ad valorem tax. The circuit court granted summary judgment to the landowners. Following the filing of consolidated appeals by the board, the Court of Appeals held that the statute providing that a taxing district can increase revenue from taxes by four percent or less per year over the compensating tax rate, without triggering a possible voter recall referendum, generally controls the ad valorem tax rate assessed by a library taxing district formed by petition. The Court also held, however, that the statute providing that the library district ad valorem tax rate may only be increased or decreased pursuant to a petition signed by 51 percent of the voters is triggered if the library seeks to increase revenue from ad valorem taxes above four percent of the revenue generated from the compensating tax rate.

VII. TRUSTS

A. *Hammond v. Hammond*

[2013-CA-000924](#) 03/27/2015 2015 WL 1400560 DR Pending

Opinion by Judge J. Lambert; Judges D. Lambert and Taylor concurred.

Appellant, who had lived on a tract of land for 40 years pursuant to a financial agreement with his father, a predecessor in title, brought suit against a successor in title, seeking the equitable remedy of a constructive trust acknowledging his part ownership interest in the tract. The circuit court declined to recognize a constructive trust, but the Court of Appeals reversed. Holding that the facts supported a finding that appellant and his father purchased the property together with the intention that appellant reside on the property, the Court concluded that a constructive trust was warranted. Even though there was no fraud established by the record, and despite the existence of a deed recognizing the successor in title as the sole owner, evidence showed that appellant and his father bought the property together, with appellant paying \$3,000 of the \$8,000 purchase price, even though a \$5,300 mortgage and deed recognized the father as the sole owner. The evidence further showed that father intended for his son to live there with his family, and that appellant made improvements to the property and lived continuously on the property for 40 years.

VIII. WILLS AND ESTATES

A. *Herron v. Hosick*

[2014-CA-000020](#) 03/20/2015 2015 WL 1275410 DR Pending

Opinion by Judge Jones; Judges Clayton and D. Lambert concurred. After the death of testator's son, and the probate of his will specifically disinheriting testator's granddaughter, granddaughter filed a declaration of rights action seeking to determine her interest in certain real property under a provision of testator's handwritten will stating that the property was "to be in my son's name," with half going to granddaughter "[i]n case of ever sold." The circuit court entered a judgment finding that granddaughter no longer had any interest in the property. The Court of Appeals affirmed in part, reversed in part, and remanded. The Court held that the subject provision was intended to give son a fee interest in the property, rather than a life estate, as nothing in the text of the will, including the use of the phrase "to be in my son's name," was indicative of the intent to convey a life estate. The Court further held that the provision was not intended to give granddaughter an actual interest in the property itself and that it instead made her a conditional beneficiary with an equitable interest in the proceeds of any future sale. The Court also held that while the provision did not entitle granddaughter to any immediate benefits arising out of the transfer of the property from son to his surviving spouse via the son's will, it did not limit granddaughter's equitable interest in any sale proceeds to sales made by son during his lifetime; thus, her interest was not extinguished by son's death.