

**PUBLISHED OPINIONS  
KENTUCKY COURT OF APPEALS  
MAY 01, 2021 to MAY 31, 2021**

**I. CONTRACT LAW**

**A. SALYERSVILLE NATIONAL BANK VS. BRANDON RUSSELL, ET. AL.**

[2020-CA-0208](#)      05/14/2021      2021 WL 1931954

Opinion by MAZE, IRV; CALDWELL, J. (CONCURS) AND KRAMER, J. (CONCURS)

The Court of Appeals reversed a summary judgment and remanded the case for entry of judgment in favor of the appellant bank on its claim that appellees were required to assign to the bank their claims against various contractors who were allegedly responsible for the destruction of the bank's collateral. As a preliminary matter, the Court of Appeals rejected appellees' contention that the bank was attempting to relitigate matters decided adversely to it in their bankruptcy proceeding. This Court held that the bankruptcy court order clearly made provision for a ruling by the Magoffin Circuit Court concerning the right to the proceeds of the ongoing litigation. Furthermore, the Court of Appeals held that the bankruptcy court's conclusion that the negligent construction and breach of warranty claims were personal to the debtors did not preclude assignment of those claims to the bank in the instant action. On the merits of the bank's contentions, the Court of Appeals concluded that the circuit court had misconstrued the plain language of the mortgage agreements regarding assignment of claims and clearly erred in misapplying settled caselaw to the undisputed facts of the case. The bank correctly argued that established caselaw required appellees to hold the proceeds of their litigation against various contractors in trust for the bank to the extent of its mortgage. In addition, the Court of Appeals concluded that the mortgage document provisions were susceptible of only one reasonable interpretation: that they encompassed a duty to assign to the bank the kind of claims appellees were pursuing against the various contractors and subcontractors for damages due to the destruction of their residence and, in turn, the destruction of the bank's collateral.

**II. CRIMINAL LAW**

**A. MICHAEL B. FOWLER VS. COMMONWEALTH OF KENTUCKY**

[2019-CA-1255](#)      05/28/2021      2021 WL 2172515

Opinion by LAMBERT, JAMES H.; COMBS, J. (CONCURS) AND MCNEILL, J. (CONCURS)

Although the Court rejected other claims for relief, it concluded an evidentiary hearing was necessary to resolve a post-conviction claim that movant's counsel was ineffective for not objecting when a physician testified that it was "quite probable" that "the story" of

a minor who alleged she was raped by the movant “was true.” The testimony was facially prejudicial, especially given the lack of physical evidence of sexual trauma, and contrary to the rule against vouching by physicians set forth in *Hoff v. Commonwealth*, 394 S.W.3d 368, 376 (Ky. 2011), but a hearing was necessary to determine if the failure to object was due to trial strategy.

**B. MICHAEL WAYNE PRIDDY VS COMMONWEALTH OF KENTUCKY**

[2020-CA-0045](#) 05/21/2021 2021 WL 2021620

Opinion by CALDWELL, JACQUELINE M.; MCNEILL, J. (CONCURS) AND TAYLOR, J. (DISSENTS AND DOES NOT FILE SEPARATE OPINION)

The Court of Appeals reversed the decision of the Jefferson Circuit Court to deny Michael Wayne Priddy’s CR 60.02 motion. By agreement with the Commonwealth, Priddy pled guilty to facilitation of rape, two counts of sodomy in the first degree, kidnapping, complicity to robbery in the first degree, burglary in the first degree, assault in the second degree, and wanton endangerment in the first degree. He was sentenced to a total of fourteen years’ imprisonment, and the Jefferson Circuit Court imposed a five-year period of conditional discharge pursuant to KRS 532.043. In his CR 60.02 motion, Priddy sought to void the portion of the judgment against him which imposed a conditional discharge, arguing he pled guilty to facilitation of rape and sodomy, an offense not enumerated in KRS 532.043. In reversing, the Court of Appeals held that Priddy neither pleaded guilty to nor was convicted of any sexually based offense enumerated in KRS 532.043(1). Therefore, Priddy was not subject to the conditional discharge described in KRS 532.043.

**III. GOVERNMENTAL IMMUNITY**

**A. LEGISLATIVE RESEARCH COMMISSION VS. DAVID LEIGHTTY**

[2020-CA-0629](#) 05/21/2021 2021 WL 2021850

Opinion by THOMPSON, LARRY E; CALDWELL, J. (CONCURS) AND COMBS, J. (CONCURS)

The Court of Appeals affirmed an order of the Franklin Circuit Court which held that it had jurisdiction to hear an appeal regarding the denial of David Leightty’s records request under the Kentucky Open Records Act. Mr. Leightty sought records of phone and internet messages left for a member of the Kentucky House of Representative. The Legislative Research Commission argued that the circuit court lacked subject matter jurisdiction because the records requested were immune from disclosure pursuant to legislative immunity. The Court held that the records did not concern any legislative act which would implicate legislative immunity. The Legislative Research Commission also argued that the General Assembly’s policy regarding a member’s telephone and electronic mail records is a nonjusticiable political question outside the jurisdiction of the

circuit court. The Court held that because these were not calls made by a member of the General Assembly, but by third parties to a member of the General Assembly, this argument lacked merit.

#### IV. INSURANCE LAW

##### A. **ETHICARE ADVISORS, INC. VS. NANCY G. ATKINS IN HER CAPACITY AS COMMISSIONER OF THE KENTUCKY**

[2019-CA-1889, 2019-CA-0024](#) 05/28/2021 2021 WL 2172552

Opinion by CLAYTON, DENISE G.; CALDWELL, J. (CONCURS) AND COMBS, J. (CONCURS)

EthiCare Advisors, Inc. entered into a contract with Kentucky Health Cooperative, Inc. (KYHC), a health maintenance organization, to provide negotiated claims settlement services for a fee consisting of a percentage of the savings it negotiated on KYHC's behalf. KYHC was subsequently placed into Rehabilitation under Kentucky's Insurers Rehabilitation and Liquidation Law, KRS 304.33-010 *et. seq.* (IRLL). In accordance with the circuit court's Rehabilitation Order, EthiCare continued to provide negotiated settlement services during the Rehabilitation period. KYHC was later found insolvent and placed into Liquidation. Two issues arose regarding EthiCare's claim against the estate: first, whether EthiCare was entitled to claim the full amount of its fees generated during the Rehabilitation period or only the amount derived from claims actually paid by KYHC, and second, which priority class would EthiCare's claim fall into under KRS 304.33-430. The Court of Appeals affirmed the circuit court's ruling that EthiCare was entitled to the entire amount of its claim because it performed fully under its contract with KYHC and in compliance with the Rehabilitation Order. It reversed the circuit court's ruling that the portion of the fees derived from claims actually paid by KYHC should receive first priority under KRS 304.33-430(1) as an administration cost, ruling instead that the entire claim fell within the sixth "residual class" because administration costs did not include normal, day-to-day expenses associated with a course of business that would occur whether or not KYHC was in Rehabilitation or Liquidation. Although the Rehabilitation order directed EthiCare to continue to provide services to KYHC, it did not transform those contractually mandated services into a cost of administration.