PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
MAY 1, 2025 to MAY 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. CIVIL RIGHTS

A. JAMES ADAM HAWKINS v. BOARD OF EDUCATION OF SCOTT COUNTY (Ky. App. 2025)

2023-CA-0688-MR 5/16/2025 2025 WL 1415680

Opinion Affirming by A. JONES, JUDGE; ACREE, J (CONCURS) AND CETRULO, J. (CONCURS)

James Hawkins, a diabetic, was terminated from his position as a bus mechanic when he began an insulin regimen and became ineligible to maintain a CDL with passenger and school bus endorsements. The Scott Circuit Court granted the Board of Education summary judgment on Hawkins's claim for disability discrimination under the KY Civil Rights Act.

We held Hawkins was not "otherwise qualified" to perform the essential functions of the employment position, with or without reasonable accommodation. Mechanics were required to test drive buses, drive operational buses to breakdowns, and substitute on bus routes. The position required four years of experience and thus was specialized. The circuit court properly concluded having a CDL with the S and P endorsements was an essential function of the job. There is no genuine issue of material fact.

Alternatively, even if Hawkins could have obtained a medical waiver, the Board did not fail to engage in the interactive process for making reasonable accommodations. Hawkins did not request an accommodation that would have allowed continued employment. That would have triggered the employer's obligation to engage in the interactive process. Hawkins never applied for or obtained a medical waiver, or mentioned it to the Board, and there is no guarantee he would have qualified. The Board offered Hawkins other alternatives which were rejected. The Board was not obligated to restructure the position anticipate accommodations which were not proposed. We affirmed.

II. CLASS CERTIFICATION

A. KENTUCKY STATE LODGE FRATERNAL ORDER OF POLICE, ET AL. v. COUNTY EMPLOYEES RETIREMENT SYSTEM, ET AL. (Ky. App. 2025)

AND

LINDA COOK v. COUNTY EMPLOYEES RETIREMENT SYSTEM, ET AL. (Ky. App. 2025)

AND

KENTUCKY PUBLIC PENSIONS AUTHORITY, ET AL. v. KENTUCKY STATE LODGE FRATERNAL ORDER OF POLICE, ET AL. (Ky. App. 2025)

AND

KENTUCKY PUBLIC PENSIONS AUTHORITY, ET AL. v. LINDA COOK (Ky. App. 2025)

2024-CA-0812-ME 2024-CA-0813-ME 2024-CA-0853-ME 2024-CA-0855-ME	5/23/2025	2025 WL 1481973

Opinion Affirming by ECKERLE, JUDGE; EASTON, J. (CONCURS) and KAREM, J. (CONCURS)

The Plaintiffs below comprise governmental retirees covered by the County Employees Retirement System (CERS). Prior to 2014, the Retirees were entitled to receive health-insurance coverage from the Kentucky Retirement Systems (now, the Kentucky Pensions Authority) throughout their retirement. After 2014, the Retirement Systems notified Retirees that they would be terminated from their state-provided coverage and required to enroll in Medicare upon reaching age 65.

The Retirees brought several actions in Franklin Circuit Court as to the merits of their claims to additional coverage. As a preliminary and expedited matter, they sought class-action certification. The Circuit Court granted certification for the classes seeking injunctive and declaratory relief but denied it as to damages.

On appeal and cross-appeal, the Kentucky Court of Appeals affirmed. In the direct appeal, the Court noted that the requirements for each proposed class involved distinct issues and proof as to damages. The Court affirmed the Circuit Court's finding that the Retirees failed to establish that common questions of law or fact predominated over individual claims. Given the wide disparity in the type of damages sought, the Court

held that the Retirees failed to establish that a class action would be the superior method of adjudication.

In the cross-appeal, the Court concluded that the Pensions Authority failed to show that the Circuit Court erred in rejecting its claims that certification is unnecessary. It ruled that the proposed subclasses for declaratory and injunctive relief are neither unworkable nor improper. They can also be reasonably defined without reference to the ultimate outcome of this litigation. Thus, the Court concluded that the Circuit Court did not abuse its discretion by granting class certification of the subclasses seeking declaratory and injunctive relief and by denying certification of the proposed damages subclasses. This ruling is confined to the class action certifications, and the Court expressed no opinion as to the merits of the underlying litigation.

III. CONSTITUTIONAL LAW

A. CHRISTOPHER TODD BESSINGER v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025)

2024-CA-0289-MR 5/16/2025 2025 WL 1416244

Opinion Affirming by CETRULO, JUDGE; ACREE, J. (CONCURS) AND TAYLOR, J. (CONCURS)

Bessinger appealed from the trial court's order denying his motion to suppress evidence obtained as a result of a warrantless search, arguing the search was an unconstitutional search and seizure. A police officer used his flashlight to shine into Bessinger's vehicle parked in the driveway, and he discovered bags of marijuana. We upheld the trial court's ruling. It was Bessinger's burden to show his vehicle was within the home's protected curtilage, and he did not meet that burden on these facts. Further, the seized evidence – bags containing marijuana – was in plain view, and the officer was on the driveway with permission. The officer's use of a flashlight, after dark, did not negate the plainly visible element.

IV. CRIMINAL LAW

A. COMMONWEALTH OF KENTUCKY v. BENJAMIN E. SHROYER (Ky. App. 2025).

2024-CA-0294-MR 5/2/2025 2025 WL 1271216

Opinion Affirming by CALDWELL, JUDGE; THOMPSON, C.J. (CONCURS) AND L. JONES, J. (CONCURS)

DISCRETIONARY REVIEW GRANTED 10/15/2025

The Commonwealth challenges the dismissal of an indictment for possession of illicit drugs and paraphernalia pursuant to KRS 218A.133 (the Medical Amnesty Statute). After taking an individual to the emergency room for treatment of a drug overdose, Shroyer was arrested by police. According to the citation, police went to Shroyer's home "to do a knock and talk due to an overdose that took place at that house," and smelled marijuana and saw a clear bad with a white crystalline substance in plain view through an open window of a car when they arrived at Shroyer's house. Officers detained Shroyer when he exited his house, and read him his *Miranda* rights. Shroyer allegedly consented to a search of his home and vehicle, and officers allegedly discovered marijuana, "spice," pills, drug paraphernalia, and a crystalline substance. Shroyer was indicted for alleged possession of methamphetamine, marijuana, synthetic drugs, and drug paraphernalia.

Shroyer filed a motion to dismiss the indictment, asserting it violated KRS 218A.133 because he had taken the overdosing individual to the emergency room and because evidence for the charges was obtained due to the overdose and need for medical assistance. The trial court granted the motion to dismiss the indictment based upon its interpretation of KRS 218A.133, and the Commonwealth appealed.

The Commonwealth asserted that the evidence supporting the indictment was not obtained as a result of the drug overdose and need for medical assistance, but was obtained due to investigation of criminal activity which occurred at Shroyer's home, away from the hospital where the need for medical assistance was being addressed. Additionally, the Commonwealth argued the "cloak of immunity" provided under the statute did not extend to anything that occurred after Shroyer left the hospital.

The Court of Appeals affirmed, concluding the trial court correctly interpreted the statute, and considered the intent behind the statute, which is to encourage individuals to seek emergency medical assistance during a perceived drug overdose. Plain reading of KRS 218A.133 simply requires that "the evidence for the charge or prosecution is obtained *as a result of* the drug overdose and need for medical assistance." (Emphasis added). Therefore, the overdose and need for treatment were part of the factors leading to the discovery of evidence. Since the statute must be liberally construed to achieve its purpose and its clear terms must be accorded their plain meanings, we discerned no error in the trial court's conclusions that KRS 218A.133's requirements for immunity were met and that it must therefore grant the motion to dismiss.

Furthermore, the Court of Appeals rejected the argument that the "cloak of immunity" automatically disappeared upon Shroyer leaving the hospital. KRS 218A.133(2)(c) does not necessarily require that the evidence be obtained at the time and place where medical assistance is sought. Instead, it simply requires that the evidence be obtained "as a result of the drug overdose and the need for medical assistance." It is not the Appellate Court's job to add additional requirements to the statute.

B. COMMONWEALTH OF KENTUCKY v. TOMMY EMBREY (Ky. App. 2025)

2023-CA-0671-MR 5/9/2025 2025 WL 1349532

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

DISCRETIONARY REVIEW GRANTED 12/10/2025

In 1996, Embrey was convicted of three counts of third-degree rape and sentenced to two years' imprisonment. He was probated the same year but was later revoked in August 2000 and served out his sentence. In August 2022, Embrey was indicted for failing to register as a sex offender. He moved to dismiss the indictment, arguing he was no longer required to register. Specifically, he argued that because he was convicted in 1996, his registration period was governed by the 1994 version of Sex Offender Registration Act (SORA), which only required ten years' registration. The trial court agreed and dismissed the indictment. The Commonwealth appealed.

The question on appeal was whether subsequent amendments to SORA apply to Embrey, making him a lifetime registrant. The Court of Appeals reversed and remanded, having found that the 2017 and 2018 amendments contain no language limiting its applicability to new registrants or persons convicted, sentenced, or incarcerated for sex crimes after either version's effective dates.

C. ELLIS D. GORE v. COMMONWEALTH OF KENTUCKY (Ky. App. 2025)

2023-CA-1107-MR 5/2/2025 2025 WL 1271325

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

The Court concluded statements given by a defendant who had not been informed of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) should have been suppressed because the totality of the circumstances showed a reasonable person in the defendant's position would not have felt free to leave. The Court noted that the defendant was questioned for two hours in a moving police car containing two armed officers; the officers asked questions and made comments indicating their suspicions about the defendant's role in another person's shooting death from the beginning of the conversation; the officers did not tell the defendant that the questioning would cease upon request; and an officer told the defendant he had to tell the complete truth if he wanted to go home that night. The Court also held the defendant's similar statements after being informed of his rights under *Miranda* should have been suppressed due to the officers' intentional, improper usage of the "question-first" investigatory technique.

V. FAMILY LAW

A. RITA R. WHITE, ET AL. v. TIARA M. FOWLER, ET AL. (Ky. App. 2025)

2024-CA-0322-MR 5/2/2025 2025 WL 1271330

Opinion Vacating and Remanding by KAREM, JUDGE; THOMPSON, C.J. (CONCURS) AND TAYLOR, J. (CONCURS)

Following the denial of grandparent visitation by Family Court, grandparents appealed. Grandparents additionally appealed the award of attorney fees and the trial judge's refusal to recuse.

The Court found there was no basis for the trial judge to award attorney fees and thus, vacated the order. Additionally, the Court held that the trial judge failed to adequately address the grandparents' concern regarding *ex parte* communications. The trial judge was therefore recused from acting as presiding judge in the litigation below pursuant to Rule 2.11 of Canon 2 of the Code of Judicial Conduct. Lastly, the Court held it was improper for the attorney appointed as Friend of the Court to also represent the father of the children thereby tainting the proceedings. She, too, was precluded from further participation in the litigation below or on appeal. Thus, the Court vacated the trial judge's order regarding grandparent visitation and remanded for a new hearing.

B. STACEY WHITLEY, ET AL. v. MICHAEL SHELTON, ET AL. (Ky. App. 2025)

2024-CA-0860-MR 5/16/2025 2025 WL 1416212

Opinion Affirming by CETRULO, JUDGE; ACREE, J. (CONCURS) AND TAYLOR, J. (CONCURS)

This appeal addresses KRS 405.021, the grandparent visitation statute. We concluded that the language of that particular statute is limited to biological grandparents, unless expanded by the legislature. However, in this case, the "lack of standing" of a step-grandmother who was awarded visitation was not timely raised. Lack of standing is a defense that must be raised in a timely manner or will be considered waived.

VI. INSURANCE

A. DALE RAE HUTCHENS, ET AL. v. JOHN HANCOCK LIFE INSURANCE COMPANY, ET AL. (Ky. App. 2025)

2024-CA-0116-MR 5/23/2025 2025 WL 1478230

Opinion Affirming by CETRULO, JUDGE; ACREE, J. (CONCURS) and TAYLOR, J. (CONCURS)

This appeal followed summary judgment rulings in favor of a life insurance company and a financial consultant. We affirmed. The "insured" died unexpectedly within weeks of applying for a two million dollar life insurance policy, but before the policy was actually delivered. While he had been approved for the coverage, the delivery of the policy before death was a condition precedent to the enforceability of the contract. There was insufficient evidence of any fraud, misrepresentation, or bad faith to warrant the matter proceeding to a jury, and no duty imposed to process this application within a reasonable time.

B. SCOTT PRESTON v. NATIONWIDE GENERAL INSURANCE COMPANY AND KENTUCKY ASSOCIATION OF COUNTIES AND ALL LINES FUND (Ky. App. 2025)

2024-CA-0152-MR 5/23/2025 2025 WL 1478614

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

Preston was injured in a motor vehicle accident while working as a paramedic. He filed a workers' compensation claim and was awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical expenses. Preston filed a claim against the other driver, and later amended his complaint to include Kentucky Association of Counties and All Lines Fund ("KALF"), Carter County EMS's insurer, and Nationwide, his insurer, for underinsured motorist ("UIM") benefits.

KALF and Nationwide both filed motions for summary judgment. Nationwide contended that two policy provisions precluded coverage: an exclusion when using a motor vehicle to carry persons for a fee and its "other insurance" clause. KALF argued Preston's claims were time-barred under the policy and that its policy specifically excluded payment for loss already compensated by workers' compensation awards. The circuit court granted both motions for summary judgment.

This Court affirmed summary judgment as to Nationwide, finding its policy was not against public policy and its provisions included plain and unambiguous language that its insurance only applied if the total amount of UIM insurance available from other sources was less than its UIM policy limits. Because KALF's policy limit exceeded Nationwide's policy limit, UIM coverage was unavailable to Preston under the Nationwide policy. This Court vacated the summary judgment as to KALF, and remanded the matter for further proceedings. The KALF policy, as it argued, did not preclude the type of damages Preston sought to recover and the claims were not time-barred.

VII. NEGLIGENCE

A. CHAD REHKAMP, ET AL. v. DREES COMPANY (Ky. App. 2025)

2024-CA-0665-MR 5/23/2025 2025 WL 1478273

Opinion Affirming by KAREM, JUDGE; L. JONES, J. (CONCURS) and MCNEILL, J. (CONCURS)

Homeowners filed suit against the builder of their home, alleging negligence and negligence *per se*. The home was originally built in 2003, and the homeowners were the fifth owners, having purchased it approximately 20 years after it was built. Almost immediately, the homeowners began experiencing plumbing issues and, ultimately, experienced 7 events within the first 4 months of owning the property. Homeowners engaged the services of a plumbing company to determine the cause of the issues they were experiencing. The plumbers scoped the pipes and determined that faulty construction by the original builder led to the presence of a "belly" in the pipes, causing sewage and water issues. Subsequently, homeowners filed suit against the builder, alleging negligence and negligence *per se*. Following a hearing, the trial court granted the builder's motion for summary judgment and dismissed the claims. The homeowners appealed.

The Court affirmed the trial court. Specifically, it held that the economic loss rule applies to consumer transactions, meaning there must be privity between the parties for the claimant to pursue damages. Here, the homeowners were not in privity with the builder and were thus precluded from recovering damages under contract theory. And, neither could they recover under the calamitous event exception to the economic loss rule because no such event existed. Thus, their claims were properly dismissed.

VIII. PROBATION

A. COMMONWEALTH OF KENTUCKY v. CHARLES BRANHAM (Ky. App. 2025)

2024-CA-0498-MR 5/23/2025 2025 WL 1478502

Opinion and Order Dismissing by TAYLOR, JUDGE; EASTON, J. (CONCURS) and ECKERLE, J. (CONCURS)

The only issue on appeal was whether the trial court erred by concluding that Branham was eligible for probation under KRS 533.060, had the court elected to enter an alternative sentence upon Branham's plea. Because probation was not granted and Branham was sentenced to prison, the appeal is moot. The law in Kentucky is well-settled that in order to bring an appeal, a party must be aggrieved or prejudiced by the judgment or order below. *Civil Serv. Comm'n v. Tankersley*, 330 S.W.2d 392, 393 (Ky. 1959). Parties are not allowed to argue moot questions of law on appeal. *Id.*

Additionally, an appeal may be considered moot and must be "dismissed where, due to subsequent events, the circumstances have changed so as to make the determination of the question unnecessary." *Sharp v. Robinson*, 388 S.W.2d 121 (Ky. 1965).

In this case, after the order on appeal was entered, a judgment was immediately entered denying probation and sentencing Branham to ten years in prison. The Commonwealth was certainly not aggrieved or prejudiced by the court stating that Branham would have been eligible for probation had the court entered an alternative sentence. Effectively, the Commonwealth sought an advisory opinion from this Court, which absent a case or controversy, this Court does not grant advisory opinions. *Associated Indus. of Kentucky v. Commonwealth*, 912 S.W.2d 947, 950-51 (Ky. 1995); *Philpot v. Patton*, 837 S.W.2d 491, 493 (Ky. 1992). The matter was dismissed as moot, as there was no justiciable cause or controversy presented by the appeal.

IX. PROCEDURE

A. SHARON MUSE JOHNSON v. KELLI KEARNEY (Ky. App. 2025)

2024-CA-0683-MR 5/30/2025 2025 WL 1536078

Opinion Reversing and Remanding by CETRULO, JUDGE; KAREM, J. (CONCURS) AND MCNEILL, J. (CONCURS)

A candidate for public office filed a lawsuit against an opponent for declaratory judgment, injunctive relief, and damages arising out of statements contained in campaign materials. The opponent responded with a motion to dismiss under UPEPA (Uniform Public Expression Protection Act), the recently enacted "anti-SLAPP" legislation.

The trial court expressed belief that the initial lawsuit had been filed in good faith, but encouraged the filer to voluntarily dismiss the suit. When the suit was then dismissed, the opponent sought attorney fees for the filing of the UPEPA motion, arguing that the Act requires such an award to the prevailing party. The Scott Circuit Court denied fees and, on appeal, we reversed. Pursuant to the legislature's plain language, fees related to the filing of a UPEPA motion shall be awarded, even upon a responding party's voluntary dismissal. KRS 454.472 and KRS 454.478.

X. STRICT LIABILITY

A. PAMELA HANNA v. DANIEL SHEA (Ky. App. 2025)

2024-CA-0881-MR 5/23/2025 2025 WL 1478600

Opinion Affirming by EASTON, JUDGE; THOMPSON, C.J. (CONCURS) and A. JONES, J. (CONCURS)

Appellant asked this Court to reverse summary judgment granted to Appellee on her claim for personal injury caused when she either tripped over, or was tripped, by Appellee's dog. Appellant contends strict liability imposed by KRS 258.235, often called the "dog-bite" statute, includes her claim. We affirm the circuit court's summary judgment.

Under KRS 258.235, liability only arises from an intentional act which could reasonably be seen as a vicious or mischievous act directed toward the person of the plaintiff, such as an attack or bite. Even if a dog technically caused the injury, general principles of statutory construction and legislative intent tend to agree that the mere presence of a dog is not a dangerous condition, and there must be some intentional act which could reasonably be seen as a vicious or mischievous act directed toward the person of the plaintiff for strict liability to apply. We do not suggest that the mere movement of a dog in its home is a dangerous or mischievous act as compared to some intentional application of force directed toward a person by a dog.

XI. WORKERS' COMPENSATION

A. JEREMY STARR v. GRAYBAR ELECTRIC, ET AL. (Ky. App. 2025)

2024-CA-1421-WC 5/2/2025 2025 WL 1271681

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

This appeal from a decision of the Workers' Compensation Board centers upon the application and interpretation of a prior decision of this Court in *Bowerman v. Black Equipment Company*, 297 S.W.3d 858 (Ky. App. 2009). The ALJ in this case construed *Bowerman* as barring amendment of a prior finding, despite recognition that there was a mistake in that prior interlocutory order. This opinion clarifies that *Bowerman* does not preclude the exercise of discretion to correct a mistake in an interlocutory ruling. That case holds only that an ALJ may not reverse a dispositive factual finding in a subsequent ruling absent a showing of new evidence, fraud, or mistake. Here, there was both new evidence and a demonstrated mistake. The matter was remanded for consideration of that information consistent with the discretion afforded to the ALJ.