PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
MAY 1, 2026 to MAY 31, 2026

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I. CIVIL LAW

A. LUMMUS CORPORATION v. LIGHTHOUSE TRANSPORTATION SERVICES, LLC (Ky. App. 2026).

2024-CA-0107-MR 5/01/2026 2026 WL 1189933

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

System Solutions, a limited liability company (LLC), was found liable for breach of contract, and the trial court imputed System Solutions' liability to its parent company, Lummus Corporation, under a veil-piercing theory. On appeal, Lummus argued Kentucky statutory law barred the application of the veil-piercing doctrine to LLCs. The Court acknowledged Lummus's argument that the Supreme Court cast some doubt as to whether the question had been fully settled by Kentucky case law and proceeded to examine the history and text of KRS 275.150. The Court held KRS 275.150 permits piercing the veil of an LLC, and that the trial court's fact-finding supported application of the doctrine, as well as the trial court's calculation of damages.

B. JESSICA THORNTON v. LOUISVILLE METRO GOVERNMENT (Ky. App. 2026).

2024-CA-1356-MR 5/01/2026 2026 WL 1189820

Opinion Reversing and Remanding by ECKERLE, JUDGE; COMBS, J. (CONCURS) AND MOYNAHAN, J. (CONCURS)

This appeal sought reversal of the Jefferson Circuit Court's grant of summary judgment to Louisville Metro Government ("Louisville Metro") under the Kentucky Open Records Act ("the KORA"). Appellant, Jessica Thornton ("Thornton"), filed suit to enforce provisions of the KORA against her former employer, Louisville Metro, alleging that it had failed to provide certain records responsive to her requests. In response, Louisville Metro requested dismissal of the suit, which the Jefferson Circuit Court properly interpreted as a motion for summary judgment. Although Thornton proffered an affidavit

as a former employee confirming her knowledge of specific email attachments not included with the responsive emails, the Circuit Court granted Louisville Metro's motion without allowing Thornton any further discovery or motion practice to support her claim that the records she sought did exist and had not been provided. Thornton appealed, asserting that the existence of the email attachments was an issue of material fact for a jury. The Court of Appeals held that the Circuit Court granted summary judgment prematurely based on the erroneous determination that Thornton had not made a *prima facie* showing that the records she sought did exist. After noting that Louisville Metro had failed to address the missing email attachments either before the Circuit Court or in its brief on appeal to rebut Thornton's evidence, the Court of Appeals reversed the Circuit Court's Order and remanded for further discovery and motion practice consistent with the opinion.

C. ***CARL F. CORVIN, ET AL. v. HARDIN COUNTY BOARD OF EDUCATION, ET AL. (Ky. App. 2026).***

2025-CA-0866-MR 5/01/2026 2026 WL 1190907

Opinion Affirming by THOMPSON, CHIEF JUDGE; CETRULO, J. (CONCURS) AND L. JONES, J. (CONCURS)

The Court of Appeals affirmed an order which denied Carl and Charito Corvin's motion to dismiss counterclaims of the Hardin County Board of Education based on the Kentucky Uniform Public Expression Protection Act (KUPEPA). The trial court held that KUPEPA did not apply in this case because one of the KUPEPA exceptions, the real property exception, applied. The trial court also held in the alternative that the Board provided sufficient evidence to defeat the motion outright. The Court of Appeals held that the real property exception did not apply because that exception only applies to cases brought to establish ownership or some other possessory interest to real property. While the underlying case stemmed from real property issues, the counterclaims concerned tortious interference with business relations and abuse of process. The Court held that these claims revolved around tortious activity and not real property; therefore, the real property KUPEPA exception did not apply. The Court went on to hold that the motion was still properly denied because a KUPEPA motion is similar to a motion for summary judgment and the Board provided sufficient evidence to defeat the motion.

D. ***COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, DEPARTMENT FOR MEDICAID SERVICES v. MOUNTAIN COMPREHENSIVE CARE CENTER, INC., ET AL. AND RUSSELL COLEMAN, ATTORNEY GENERAL, ON BEHALF OF THE COMMONWEALTH OF KENTUCKY v. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. (Ky. App. 2026).***

2025-CA-0122-MR 5/08/2026 2026 WL 1261486
2025-CR-0166-MR

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

The consolidated appeals arose from the circuit court's order declaring portions of 2023 House Bill 56 ("HB 56") unconstitutional and enjoining their enforcement. In the relevant part, HB 56 governs the provision and reimbursement of behavioral health services under Kentucky's Medicaid program, including reimbursement to community mental health centers ("CMHCs") for services provided outside their designated regional service areas. Under the reimbursement scheme prior to HB 56, CMHCs operated as designated safety-net providers with broad obligations within assigned multi-county regions, and they received a preferred reimbursement rate. A separate category of provider, behavioral health services organizations ("BHSOs") were not subject to the additional duties and oversight faced by CMHCs providing services in their regions and were paid at a generally lower rate than that received by CMHCs.

Prior to the passage of HB 56, CMHCs which chose to operate outside their designated counties effectively worked as BHSOs in those outside areas, yet they collected reimbursement rates at the CMHC level. HB 56 changed this reimbursement policy, stating that CMHCs were permitted to provide services outside their regions, but they would receive the BHSO fee schedule when they did so. In short, HB 56 stated that CMHCs would receive a lower reimbursement rate when providing services outside of their assigned regions.

The circuit court granted summary judgment to the CMHC Appellee, Mountain Comprehensive Care Center, Inc., ruling that HB 56 was unconstitutional on equal protection and due process grounds because it created an impermissible geographic classification lacking any rational basis. The Court of Appeals reversed, determining that the circuit court improperly conducted rational basis review based entirely on the geographic distinction of the providers, without also considering that CMHCs operating in their designated regions have heightened obligations over and above those required of BHSOs. Under such circumstances, the General Assembly was entitled to recognize those differences and legislate accordingly. We remanded to the circuit court for further proceedings.

In the consolidated appeal, the Appellees challenged the authority of the Attorney General to appeal the lower court's ruling when the Attorney General was not a party of record. The Court of Appeals reasoned that the Attorney General occupies a unique constitutional and statutory role, charged with representing the interests of the Commonwealth in litigation pursuant KRS 15.020. The Court held that the plain text of KRS 15.090 authorizing the Attorney General to "prosecute an appeal . . . in any case . . . whenever, in his judgment, the interest of the Commonwealth demands it[]" contained no limitation requiring the Attorney General to be a party to the proceedings below. However, the Attorney General is simultaneously constrained by the principles of appellate practice which forbids an appellate court from considering new claims which were not raised previously. Here, however, the Attorney General only raised arguments mirroring those made by the Cabinet below, thus allowing review on the merits.

E. JOHNNY WILSON, ET AL. v. 3M COMPANY F/K/A MINNESOTA MINING AND MANUFACTURING COMPANY, ET AL. (Ky. App. 2026).

2023-CA-0574-MR 2023-CR-0615-MR	5/15/2026	2026 WL 911427

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

This is an appeal from a denial of relief under CR 60.02. The underlying issue addressed the statute of limitations in pneumoconiosis-related personal injury actions claimed to be connected with single-use respirator masks.

In an order dismissing Wilson's action, the trial court granted summary judgment for 3M finding the action time-barred. The court found that Wilson had "actual knowledge" of a connection between the disease and the respirators by January 2019, but the one-year statute of limitations had expired when suit was filed in March 2020. Because Wilson did not file a timely appeal from that order, we addressed only the denial of CR 60.02 relief. Finding no abuse of discretion, we affirmed the Pike Circuit Court.

F. CERTIFIED RESTORATION SERVICES, INC. v. SEAN FITZGERALD, ET AL. (Ky. App. 2026).

2024-CA-1534-MR	5/22/2026	2026 WL 1441840

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

Certified Restoration Services, Inc. (CRS), performed restoration work related to water damage covered under a homeowner's insurance policy issued to Appellees (the

Fitzgeralds) by USAA General Indemnity Company (USAA). After a dispute with USAA for the charges CRS claimed, CRS filed a mechanic's and materialman's lien and later brought this action against the Fitzgeralds for breach of contract, unjust enrichment, and *quantum meruit*.

The Laurel Circuit Court granted summary judgment in favor of the Fitzgeralds on CRS's Complaint finding a lack of any evidence to show the Fitzgeralds requested CRS to perform non-covered, additional work for which they had not paid. Prior to the jury trial, the circuit court granted another partial summary judgment in favor of the Fitzgeralds ruling that CRS had failed to properly plead and rely on a newly revealed Agreement, disclosed two years after the action began, which CRS purported to be another "contract". After trial, the circuit court also awarded attorney's fees and punitive damages on the Fitzgeralds' Counterclaim for malicious prosecution, slander of title, and violation of the Kentucky Consumer Protection Act (KCPA).

As to the first order granting summary judgment, the circuit court did not err in disposing of CRS's claims as CRS did not present any evidence of a breach of contract claim. The initially alleged contract merely assigned the Fitzgeralds' insurance rights to payment to CRS. As to CRS's other claims, the assignment did not provide that the Fitzgeralds would pay any amount USAA refused. Also, the evidence offered showed that CRS was paid in full by USAA.

The Court also affirmed the order granting partial summary judgment, which was essentially a motion to reconsider summary judgment. With there being no Kentucky case law directly on point, the Court used established federal guidelines for revisiting a previously granted summary judgment. Reconsideration of a grant of summary judgment should be done only on the grounds of: "(1) an intervening change in the law, (2) new evidence that was not previously available, or (3) correction of a clear error of law or to prevent manifest injustice." *Wootten v. Commonwealth of Virginia*, 168 F. Supp. 3d 890, 893 (W. D. Va. 2016). Reconsideration of a previously granted summary judgment is not for situations of a dissatisfied party trying to "craft new [and] improved legal positions" especially by presenting "evidence that could have been addressed or presented previously." *Id*.

As to the Fitzgeralds' counterclaims, the evidence presented to the jury adequately supported the finding that CRS engaged in a wrongful use of a civil proceeding as it lacked probable cause. The filing of a lien on the Fitzgeralds' property when CRS knew the amount claimed was not actually owed by the Fitzgeralds and maliciously intending to use the lien as leverage satisfies the elements of slander of title. CRS was adequately paid by USAA but still recorded a lien and sued the Fitzgeralds seeking additional payment. It follows that the KCPA was also violated by CRS's actions. As to the attorney's fees, even if it was in error to submit the amount of attorney's fees to a jury, the error was harmless and so must be disregarded. CR 61.01. There is no question that the Fitzgeralds incurred the $8,500 the jury awarded for the expense of dealing with the initial stages of the litigation, and the KCPA separately authorizes

consideration of attorney's fees. The circuit court included the initial $8,500 awarded by the jury on the total amount awarded by the court. Considering all the factors for punitive damages, it cannot be said that the remitted amount (the circuit court reduced the amount from $400,000 awarded by the jury to $200,000) violates due process. This Court affirmed all the circuit court's orders.

G. ***HARVEY PELFREY, ET AL. v. THE ESTATE OF STEVEN DEWEY MCDOWELL, BY AND THROUGH BRENDA ROBERTS, AS ADMINISTRATRIX (Ky. App. 2026).***

2025-CA-0498-MR 5/29/2026 2026 WL 1500960

Opinion Reversing in part and Dismissing in part by THOMPSON, CHIEF JUDGE; COMBS, J. (CONCURS) AND A. JONES, J. (CONCURS)

The Court of Appeals held that certain officers of the Three Forks Regional Jail were entitled to qualified official immunity in the death of an inmate after being exposed to oleum capsicum (OC) spray. The Court held that the methods an officer uses to supervise and control inmates are discretionary acts; therefore, the use of OC spray to force an inmate to comply with commands was part of that discretionary authority. The Court also held that the use of the OC was done in good faith because the inmate was not complying with officers' commands and the OC use was terminated once the inmate complied. Finally, the Court held that the use of the OC spray was within the officers' scope of the authority. The Court believed these officers were entitled to qualified official immunity. The Court also held that the administrator of the jail was entitled to qualified official immunity because his training of the jail staff and creation of jail procedures were discretionary acts, done in good faith, and within the scope of his authority.

H. ***CLOVER CREEK SOLAR PROJECT, LLC D/B/A NEW FRONTIERS SOLAR PARK, ET AL. v. BRECKINRIDGE COUNTY FISCAL COURT (Ky. App. 2026).***

2025-CA-0983-MR 5/29/2026 2026 WL 1501061

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

This is an appeal from a judgment of the Breckinridge Circuit Court which enforced an "ordinance" of the Fiscal Court that addressed operation, location, and construction of proposed solar energy systems in the area. Clover Creek and several landowners appealed, arguing that the Fiscal Court lacked authority to adopt ordinances which conflicted with the state regulatory scheme for such facilities.

On appeal, we reversed the circuit court decision, specifically finding that the two ordinances enacted here were invalid planning and zoning regulations. They regulated land use, did not comply with the provisions of KRS Chapter 100, and were not entitled to priority over the state board's certificate issued to Clover Creek. The applicable statutes in KRS Chapter 278 only permit a local government with a planning and zoning commission to establish setback and decommissioning requirements that regulate such facilities and may have priority over the state siting board's review.

Judge Easton concurred, writing separately to explain that Breckinridge County did not enact a permissible planning and zoning agency under KRS Chapter 100. While there may be some benefits to such as decision, there are also consequences, including a loss in the level of local control. Additionally, Judge Easton explained that the 2022 Ordinance was clearly a zoning regulation. The 2025 Ordinance attempted to regulate the same subject matter and simply stating that it is not intended to be a zoning ordinance does not make it so.

II. CRIMINAL LAW

A. GRACE MAREDITH WILKEY v. COMMONWEALTH OF KENTUCKY (Ky. App. 2026).

2025-CA-0526-MR 5/01/2026 2026 WL 1189294

Opinion and Order Affirming by ECKERLE, JUDGE; A. JONES, J. (CONCURS) AND L. JONES, J. (CONCURS)

This appeal addresses the denial of a motion to expunge an enhanceable offense. The appellant sought to vacate and expunge her convictions to multiple offenses arising out of a single incident in 2013. Included in her application for expungement was a conviction for possession of a controlled substance, prescription not in original container, KRS 218A.210, which is a Class B misdemeanor for the first offense, enhanceable to a Class A misdemeanor for subsequent offenses. The Trial Court granted appellant's application except for the prescription handling offense, which, as an offense subject to enhancement, was ineligible for expungement pursuant to KRS 431.078(4)(d). Subsequently, appellant filed a CR 60.02 motion for relief from judgment and to dismiss with prejudice her conviction, which the Trial Court denied. Appellant also sought to use only her initials and seal her record on appeal.

In affirming the Trial Court, the Court of Appeals held that appellant did not present an error in fact regarding her prior misdemeanor conviction under KRS 218A.210 and failed to bring her CR 60.02 motion within a reasonable time. Moreover, the Court opined that using CR 60.02 to set aside and dismiss with prejudice her conviction under KRS 218A.210 would circumvent and violate KRS 431.078(4)(d), which unequivocally

provides that an enhanceable offense is ineligible for expungement. Finally, the Court of Appeals held that RAP(5)(B)(2) permits the use of initials only in "appeals arising from judgments granting expungements." As expungement of the KRS 218A.210 charge was not granted and the record addresses a non-confidential and non-expungeable criminal charge, the Court ordered the appellate record to be unsealed and remain public.

B. ***JOSEPH W. DAUGHERTY v. COMMONWEALTH OF KENTUCKY (Ky. App. 2026).***

2025-CA-0134-MR 5/08/2026 2026 WL 1261139

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

Daugherty was an inmate at the Kentucky State Penitentiary and was placed in the restrictive housing unit. When an officer opened the cell's tray slot, Daugherty threw liquid feces from a cup toward a nurse, there to provide him medication, and the officer. Daugherty was convicted of two counts of third-degree assault and being a second-degree persistent felony offender and was sentenced to 18 years.

Daugherty appealed the conviction arguing that the circuit court erred in denying his motions for a directed verdict. As to the nurse, Daugherty argued that she was not an employee of the detention facility; thus, he could not be guilty of third-degree assault under KRS 508.025(1)(b). The Court of Appeals affirmed, ruling that the under KRS 508.025(1)(b), an employee of the facility simply means a person employed and paid wages to work at the detention facility. While the nurse was not directly employed by the detention facility, she worked full time at the facility and was required to follow the facility's regulations. The Court found the nurse was an employee under the statute.

Daugherty then argued that there was insufficient evidence to show that he threw feces at the officer. Daugherty argues that he threw feces at the nurse and not the officer. The surveillance video shown at trial shows the officer standing in front of the tray slot on Daugherty's cell. The officer testified that he actually opened the cell's tray slot, and once opened, Daugherty threw feces in his and the nurse's direction. The Court affirmed, ruling that there was sufficient evidence presented to prove beyond a reasonable doubt that Daugherty threw feces upon the officer's pants and shoes.

C. ***COMMONWEALTH OF KENTUCKY v. KENDALL DAUGHERTY (Ky. App. 2026).***

2025-CA-0367-MR 5/29/2026 2026 WL 1500838
2025-CA-0752-MR

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

The Court of Appeals held that a husband who permitted his wife to testify on his behalf during two pretrial hearings could not later invoke the KRE 504(a) spousal testimony privilege at trial. The Court held that, pursuant to KRE 509, when the husband consented to his wife's disclosure of otherwise privileged information during the pretrial hearings, he waived the privilege and it could not later be invoked. The Court also held that the spousal testimony privilege only applies to testimony that would be adverse or detrimental to the party spouse, not all testimony.

III. PROBATION REVOCATION

A. MARVIN MAYS v. COMMONWEALTH OF KENTUCKY (Ky. App. 2026).

2025-CA-0377-MR 5/15/2026 2026 WL 1354866

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

After defendant Mays pled guilty to robbery in the second degree, the Jefferson Circuit Court imposed a ten-year sentence, probated for a period of five years. His probation was later revoked several times, including after multiple shock probation motions had been granted. During a probation revocation hearing that occurred more than five years after he was initially sentenced, defendant moved under KRS 533.020(4) to be discharged from probation, claiming the circuit court no longer retained jurisdiction over his probation because of the five-year statutory cap. The circuit court denied his request, revoked Mays' probation for the final time, and sentenced him to the remaining portion of his original ten-year sentence. The Court of Appeals affirmed, holding that when a probation revocation occurs, the original probationary term is extinguished and any subsequent sentence imposed creates, in effect, a new probation term that re-starts the five-year limitation found in KRS 533.020(4). Put another way, a court's granting a motion for shock probation following a revocation does not resume the prior probationary period. Thus, in this instance, the circuit court properly retained jurisdiction over Mays to revoke his probation.

IV. WRIT OF MANDAMUS AND PROHIBITION

A. TRACY KISENDA v. HON. PATRICIA M. SUMME, JUDGE, KENTON CIRCUIT COURT, ET AL. (Ky. App. 2026).

2026-CA-0023-OA 5/22/2026 2026 WL 1449690

Opinion and Order Denying Petition for Writ of Mandamus and Prohibition by ECKERLE, JUDGE; ACREE, J. (CONCURS) AND COMBS, J. (DISSENTS AND FILES SEPARATE OPINION)

Kisenda, by counsel, petitions for a writ of mandamus and prohibition to prevent retrial, following a mistrial, and to mandate an order dismissing the case with prejudice. Kisenda asserts that a retrial will violate his right to protection from double jeopardy. Kisenda was pulled over for a traffic stop. When he refused to follow the officers' requests, the officers tried to remove Kisenda from the vehicle. Kisenda fought with the officers, kicking one in the groin. Kisenda was charged with assault in the third-degree (police officer) and obstructing governmental operations.

At trial, the officer that was kicked, Specialist Douglas Ullrich, was cross-examined by Kisenda's counsel. When asking how long Ullrich has worked with the Covington Police Department, Counsel made the statement "[s]o in that time, you have had 4 different civil lawsuits filed against you." After the Commonwealth objected and a lengthy hearing outside the presence of the jury, the Trial Court declared a mistrial. Kisenda then filed a motion to dismiss the case claiming that a retrial would violate double jeopardy.

Our Supreme Court has held that "although double jeopardy is an appropriate subject for a writ of prohibition, it is not mandatory that it be addressed in that context." *Sneed v. Burress*, 500 S.W.3d 791, 793 (Ky. 2016). It is well-settled that we may assess directly the Trial Court's declaration of a mistrial and affirm the lower Court's judgment on any ground that is supported by the record. *Wells v. Commonwealth*, 512 S.W.3d 720 (Ky. 2017). The Court of Appeals found that Counsel's statement was improper, inadmissible, and prejudicial under the Kentucky Rules of Evidence. Additionally, another factor in favor of finding that mistrial was proper is that the statement was unilaterally made by defense counsel. This Court denied the writ.

Judge Combs dissented and would have granted the writ.

V. FAMILY LAW

A. SARAH ELIZABETH FISHER v. CALA MEIKLE, ET AL. (Ky. App. 2026).

2025-CA-1409-ME 5/29/2026 2026 WL 1501015

Opinion Affirming by EASTON, JUDGE; A. JONES, J. (CONCURS) AND MOYNAHAN, J. (CONCURS)

This is an appeal of the family court's decision to not issue a domestic violence order (DVO). Appellant Mother filed the petition on behalf of her minor children against Appellee, Cala Meikle ("Cala"), the girlfriend of the children's father. A therapist who was working with the children testified at the DVO hearing. The therapist testified about bruises she witnessed on the children and statements the children made about Cala. A Friend of the Court (FOC) also testified as to statements the children had made. For both witnesses, Cala's counsel objected to the children's statements as hearsay. The family court determined the hearsay exception of KRE 803(4) did not apply in these circumstances and did not allow the hearsay testimony.

Mother argues that the testimony of the children's statements should have been allowed. Cala argues that only a GAL has standing to appeal. This Court found that Mother has standing to bring this appeal. As to the hearsay issue, the statements were properly excluded as the exceptions of KRE 803(3) and KRE 803(4) do not apply. KRE 803(3) allows statements of *then* existing mental, emotion, or physical condition. This argument was never presented to the circuit court; therefore, it is improperly before this Court. Also, the exception would not apply as the children were relaying what had occurred to cause their injuries, not their then existing condition. KRE 803(4) allows statements for purposes of medical treatment or diagnosis. Mother argues that the therapist's statement should be admitted citing to *D.L.B. v. Cabinet for Health and Family Services*, 418 S.W.3d 426 (Ky. App. 2014), in which this Court determined it was an abuse of discretion to not allow the children's therapist to testify regarding the children's statements. However, *D.L.B.* is distinguishable because it was a termination action, where an overall best-interest analysis is required. There was no abuse of discretion to limit the testimony here. The hearsay exceptions that apply to FOCs are not applicable here as he was appointed for the custody proceedings, not this DVO action. The FOC was merely a fact witness. This Court affirmed the family court's determination.