PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
NOVEMBER 1, 2025 to NOVEMBER 30, 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 LAW

A. MARSHALL TODD D/B/A MARSHALL TODD BUILDERS v. RUSSELL WESLEY, ET AL. (Ky. App. 2025).

2025-CA-0278-MR 11/07/2025 2025 WL 3126016

Opinion Affirming by CETRULO, JUDGE; THOMPSON, C.J. (CONCURS) AND MOYNAHAN, J. (CONCURS)

This appeal follows a jury verdict in favor of homeowners against their builder. The builder of the home initiated the lawsuit after the homeowners refused to pay the final invoice, citing numerous failures and problems with the construction. In response to the builder's filing, they filed a counterclaim for damages for the defective construction. They supported their claim with evidence that the total damages were, in effect, the full value of the home of approximately $250,000.

The jury agreed with the homeowners, awarded them full damages sought, and denied any recovery on the unpaid invoice to the builder. On appeal, the builder argued he was entitled to a directed verdict and that the instructions to the jury were misleading. We affirmed the judgment on the jury verdict, finding ample evidence to submit the issue of failure to pay the invoice to the jury.

Similarly, the court held that the jury instructions were substantially correct and did not mislead the jury on the doctrine of substantial performance.

B. ANDES ROOFING, LLC v. JOSEPH RUSNAK (Ky. App. 2025).

2024-CA-1092-MR 11/21/2025 2025 WL 3247326

Opinion Affirming in part, Reversing in part, and Remanding by TAYLOR, JUDGE; COMBS, J. (CONCURS) AND L. JONES, J. (CONCURS)

This matter is an appeal by Andes Roofing from the order granting dismissal of their defamation claim against Rusnak. The circuit court determined that the Uniform Public Expression Protection Act ("UPEPA") applied to Rusnak's statements because they

were matters of public concern. The circuit court then dismissed the defamation claim because it ruled that the statements were not actionable.

This Court affirmed the circuit court ruling that the statements made were a matter of public concern; thus, the UPEPA applied. In *Davenport Extreme Pools & Spas, Inc. v. Mulflur*, this Court concluded that the UPEPA was intended by the General Assembly to apply widely to expressions both public and private, especially speech relating to consumer opinions. 698 S.W.3d 140, 155 (Ky. App. 2024). In fact, the Court quoted KRS 454.462(2)(b)(2) to state that the UPEPA expressly covers actions involving reviews of businesses. *Id.* As in *Davenport Extreme Pools*, Rusnak's statements concerned Andes Roofing's quality of work, business acumen, and trustworthiness. This Court concluded that Rusnak's statements regarding Andes Roofing were a matter of public concern under KRS 434.462(1)(c).

However, this Court reversed and remanded the circuit court ruling that all statements were not actionable. The statements by Rusnak that Andes Roofing was a terrible company to do business with, used unskilled workers, did terrible work, and encouraging others to not use the company, constitute Rusnak's subjective opinions concerning Andes Roofing. These statements are based upon Rusnak's own perception, are inherently subjective, and are incapable of being proven true or false. These statements are absolutely privileged as pure opinion and dismissal was proper. However, the Court found one comment more troublesome. "'[T]hey delete all negative reviews!!! They do leave a few to look normal . . . Ethan Andes is a Con Man!!!!'" The Court determined that calling someone a con man is an opinion and is protected. However, Andes deleting negative reviews is a fact that is capable of being proven true or false. Such a statement is neither subjective nor expresses an opinion and is certainly defamatory. This case was remanded for the circuit court to determine the truth or falsity of this statement following discovery.

II. UNIFORM DURBLE POWER OF ATTORNEY ACT

A. FRANCES SCOTT REAGAN, BY AND THROUGH HER AGENT AND ATTORNEY-IN-FACT, ROBERT G. REAGAN v. CAPITAL ONE FINANCIAL CORPORATION A/K/A CAPITAL ONE, N.A. CORPORATION (Ky. App. 2025).

2024-CA-1377-MR 09/05/2025 2025 WL 2551805

Opinion Affirming by COMBS, JUDGE; EASTON, J. (CONCURS) AND LAMBERT, J. (CONCURS)

This case presents an issue of first impression arising from the Uniform Durable Power of Attorney Act, KRS Chapter 457. It arises from a dispute as to how to construe the Act in light of the role of an institution to ascertain the proper identification of a putative power of attorney (POA) who presents such an instrument.

The appellant appointed her two grandsons as her agents and granted them each a POA. One of them, Robert, acting in her name, corresponded with Capitol One with whom Ms. Reagan had a credit card account. He presented his POA and demanded that it be recognized and honored within 7 business days under pain of liability by the bank for attorney's fees and costs in enforcing its acceptance.

The bank responded and demanded confirmation of the following information from Robert: date of birth, address, Social Security number or tax ID, and a government-issued photo ID (*e.g.*, a copy of a driver's license). Robert viewed that request as a rejection by the bank. He finally submitted a poor, illegible copy of his photo ID. The bank again requested better identification. Robert then filed suit against the bank—as noted by the bank, "rather than simply providing basic details to confirm his identity." The bank emphasized its duty to identify its customers and their duly appointed agents for the sake of their security.

The trial court granted summary judgment in favor of the bank. Robert then filed this appeal.

We affirmed entry of summary judgment in favor of the bank. The Kentucky statute specifically defers to "any other law applicable to financial institutions." And that law is the federal act (the Bank Secrecy Act, later confirmed by the Patriot Act) that requires the furnishing of the very same information demanded by Capitol One in this case to ascertain the identity of its customers and their purported agents.

III. INSURANCE LAW

A. 2 BROTHERS MARKET, LLC, ET AL. v. KENTUCKY FARM BUREAU INSURANCE COMPANY (Ky. App. 2025).

2024-CA-0755-MR 11/21/2025 2025 WL 3247475

Opinion Affirming by TAYLOR, JUDGE; ACREE, J. (CONCURS) AND CERTULO, J. (CONCURS) **Opinion order not to be published. 8/12/2026**

In a declaratory action, the Jefferson Circuit Court granted summary judgment in favor of the appellee ("KFB"), finding that a commercial general liability ("CGL") policy KFB had issued to appellant 2 Brothers Market, LLC, ("2 Brothers") did not obligate KFB to defend or indemnify 2 Brothers or its member and employee, appellant Safwat Ballasi, in a wrongful death action asserted against those appellants by the Estate of Johnathon Dupin for Ballasi's fatal shooting of its decedent. 2 Brothers and Ballasi appealed. The Court of Appeals affirmed on the ground that 2 Brothers and Ballasi could not – considering the evidence presented and circumstances alleged in the Estate's complaint – be considered KFB's "insureds." The language of KFB's CGL policy indicated that whether Ballasi and 2 Brothers qualified as "insureds" depended upon

whether Ballasi was acting within the scope of his employment when he shot Dupin. The appellants believed Ballasi was doing so when he shot Dupin because he had shot Dupin while working his shift as the manager of 2 Brothers' convenience store; the shooting had occurred on 2 Brothers' business premises; Ballasi had shot Dupin with a gun obtained from his interaction with a 2 Brothers customer; and because interacting with customers and building rapport with them was, in the appellants' view, part of Ballasi's everyday duties as a manager and "good for business."

However, as the Court explained, ascertaining whether a given act is within the scope of employment is not simply a matter of determining whether the act occurred during the servant's shift or on the business's premises, or whether the act that led to the shooting was of some tangential benefit to the employer's business. An act is within the scope of employment when it is necessary to accomplish the purpose of the employment and intended for that purpose. Here, Ballasi did not accidentally discharge a gun that could have been viewed as a tool of his business, nor did he do so while attempting to complete a sale. Ballasi did not own the gun he fired at Dupin, nor had he seen it before that date. He obtained the weapon after a regular customer of the convenience store came to the store, purchased inventory, and then, later, offered to show Ballasi two guns he had in his possession. Ballasi also did not use the gun in an attempt to defend himself from a foreseeable threat of harm posed by his employment. Further, Ballasi's manipulation of the handgun – his act that ultimately led to Dupin's death – was not necessary to accomplish the purpose of his employment. According to the recitals of its CGL policy, 2 Brothers was in the business of operating "Convenience Food Stores With Limited Cooking Restaurant – No Gasoline Sales[.]" It was not in the business of inspecting the firearms of its customers. Thus, regardless of whether Ballasi was inspecting the handgun that ultimately killed Dupin or simply playing with it, his act could not be considered within the scope of 2 Brothers' business, within the scope of Ballasi's conduct of its business, nor within the scope of Ballasi's duties as its employee. Thus, neither Ballasi, nor 2 Brothers (by virtue of vicarious liability principles), were "insureds" under the CGL policy issued by KFB and they were accordingly entitled to no coverage.

IV. FAMILY LAW

A. ALLEN RAY JORDAN v. SANDY LYNN BOSS (Ky. App. 2025). AND SANDY LYNN BOSS JORDAN (NOW BOSS) v. ALLEN RAY JORDAN (Ky. App. 2025).

2024-CA-0593-MR 11/14/2025 2025 WL 3180863
2024-CA-0632-MR

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

Appellant/Cross-Appellee, Allen Ray Jordan ("Jordan"), and Appellee/Cross-Appellant. Sandy Lynn Boss ("Boss"), challenge orders of the Todd Circuit Court in matters relating to the dissolution of their marriage. In his direct appeal, Jordan primarily argues that the Trial Judge was compelled to recuse himself due to unethical conduct. It is undisputed here that the Trial Judge engaged in impermissible, *ex parte* communications about the merits of the case and the parties, both of which were the subject of his rulings. He then declined to recuse himself. Significantly, in supplemental recusal proceedings, now-retired Chief Justice John Minton acknowledged the impropriety of the Trial Judge's actions but declined to order recusal at the time. Instead, he chose to allow the trial to proceed and the issues to be relitigated before this Court.

The Court of Appeals reverses the trial proceedings and rulings and orders the recusal of the Trial Judge, further finding that the two prior motions to recuse were timely. The improperly obtained information tainted the entire proceedings and resulted in the appearance of impropriety and unfairness. We remand the case for the appointment of a Special Judge to try the case anew. Thus, we need not address the specific claims regarding each claimed error in the rulings below as to the appeal and cross-appeal, as they will not withstand the necessary recusal. We further deny Jordan's motion to strike Boss's brief due to relatively minor deficiencies under the circumstances.

B. KYLE LONG v. SAMANTHA LONG (NOW SCRUGGS) (Ky. App. 2025).

2024-CA-1423-MR 11/14/2025 2025 WL 3180725

Opinion Vacating and Remanding by LAMBERT, JUDGE; COMBS, J. (CONCURS) AND EASTON, J. (CONCURS)

Appeal by father from the order granting mother's motion to relocate out-of-state with the children and amend the visitation schedule. Based upon the holding in *Childress v. Hart*, 592 S.W.3d 314, 316 (Ky. App. 2019), this Court vacated the order and remanded the matter to the circuit court. *Childress* confirmed that a best interest standard governs the modification of timesharing based upon relocation, for which the court must make appropriate findings of fact and conclusions of law. Here, the circuit court did not make any findings of fact or conclusions of law with respect to the best interest standard when it granted the motion to relocate. On remand, the court was directed to make appropriate findings and conclusions as well as rule on the other pending motions related to custody and visitation.

C. F.M. v. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL. (Ky. App. 2025).

2024-CA-1351-ME 11/21/2025 2025 WL 3247307

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

F.M. ("Father") entered a stipulation dependency, neglect, or abuse. As a result, he was placed on the Child Abuse and Neglect Central Registry, affecting his employment as a public-school teacher. Approximately eight months later, he filed a motion to set aside his stipulation. The family court denied his motion.

We stated Father should have filed a direct appeal if he sought to raise ineffective assistance of counsel claims, therefore his motion was untimely. We also held that Father's claim lacked substantive merit. Assuming that Father's attorney had a duty to warn about collateral consequences, loss of employment is not so permanent, dire, or certain that competent counsel would have been expected to advise Father about it. No attorney can reasonably be expected to anticipate all collateral consequences that might flow from registry placement.

Finally, Father entered his stipulation voluntarily and sufficient evidence existed outside of the DNA proceeding to place his name on the registry. Father additionally stipulated to the same facts in the EPO/DVO proceeding. If Father believes he was wrongfully placed on the registry, there is a separate administrative appeal.