PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
SEPTEMBER 1, 2025 to SEPTEMBER 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. ESQUARED COMMUNICATIONS, LLC, ET AL. v. DON YATES, JR., ET AL. (Ky. App. 2025).

2024-CA-0621-MR 9/19/2025 2025 WL 2678561

Opinion Affirming in Part, Reversing in Part, and Remanding by KAREM, JUDGE; THOMPSON, C.J. (CONCURS) AND TAYLOR, J. (CONCURS)

A telecommunications business was formed when two partners executed a one-page, handwritten document entitled "Ownership Agreement" outlining minimal details governing their LLC. After 12 years of operation, one partner filed suit against the other, alleging, among other claims, breach of fiduciary duty, breach of contract/operating agreement, conversion, and tortious inference. In addition, he requested the equitable remedy of an accounting. The trial court granted summary judgment to the defendants, dismissing all the above claims. The decision was subsequently appealed.

The Court affirmed in part, reversed in part, and remanded the case to the trial court for further proceedings. Specifically, it held that the trial court was correct in the dismissal of the following claims: tortious interference - the plaintiff did not satisfy a key element of the claim; breach of contract/operating agreement claim – no such document was proven to exist; and conversion – the managing partner had apparent authority to make transactions without partner approval.

However, the Court reversed the trial court's order dismissing the claims alleging breach of fiduciary duty and requesting an accounting, finding the dismissals premature. These issues were returned to the trial court for hearings to determine whether a claim for either can be maintained.

B. LORIANE POWELL v. MICHAEL POWELL, ET AL. AND GEICO INDEMNITY COMPANY v. LORIANE POWELL, ET AL. (Ky. App. 2025).

2024-CA-0886-MR 9/19/2025 2025 WL 2679731
2024-CA-1385-MR
2024-CA-1413-MR

Opinion Reversing and Dismissing in Part, and Affirming in Part by CETRULO, JUDGE; KAREM, J. (CONCURS) AND MOYNAHAN, J. (CONCURS)

This is an appeal from summary judgment in favor of an insurer in an action involving out-of-state residents and policies of insurance.

It is also a case where an untimely appeal required partial dismissal. In this action, the circuit court issued two rulings within five days of each other. The notice of appeal was timely filed as to one of the orders. The amended notice was filed five days after the 30-day deadline. Counsel convinced the circuit court to enlarge the time, arguing he had computer issues on the day the first ruling was entered and then was out of the office at a continuing legal education conference. We reversed, relying upon recent Supreme Court precedent holding this was insufficient to constitute excusable neglect so as to provide this Court with jurisdiction.

The remaining ruling from which the appeal was timely filed was affirmed. Geico properly denied coverage to an out-of-state resident on a policy issued in Tennessee which contained a household exclusion. While such exclusions are disfavored in Kentucky, our precedent upholds the application of the other states' laws in such instances. This was a claim for coverage under a Tennessee motorcycle policy, and Kentucky had no strong public policy to require application of Kentucky law.

C. ***MATTHEW SCHNEIDER v. BUTTERMILK SHOPPING CENTER, LLC, ET AL. (Ky. App. 2025).***

2024-CA-1036-MR 9/19/2025 2025 WL 2679049

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

A shopping center filed a breach of contract suit against its former tenant, a limited liability company ("LLC") registered in Ohio, and its principal. The trial court granted summary judgment on the issue of liability, on the grounds that the principal of the LLC could be held personally liable under KRS 275.095 for failing to organize under Kentucky law as the LLC had not obtained a certificate of authority to do business in Kentucky pursuant to KRS 14A.9-010(1).

The Court held that organization and registration are distinct concepts and that a foreign LLC is not required to "organize" under Kentucky law, citing KRS 275.380, which differentiates between organization and registration and plainly states that the laws of the state under which a foreign LLC is organized shall continue to govern its organization and internal affairs. The Court stated that KRS 275.095 was intended to impose liability on persons misrepresenting themselves as agents of LLCs that do not exist or as agents of an existing LLC but without its approval. Consequently, the Court reversed the holding that the LLC and its principal are jointly and severally liable to the shopping center. It further held that the principal was personally liable for the portion of

the debt incurred during the initial term of the lease because he had signed a personal guarantee to that effect. The case was remanded for further proceedings.

II. FAMILY LAW

A. CHAD HERL v. HALEY HERL (Ky. App. 2025).

2024-CA-0412-MR 9/5/2025 2025 WL 2551892

Opinion Vacating and Remanding by A. JONES, JUDGE; ACREE, J. (CONCURS) AND McNEILL, J. (CONCURS)

In a direct appeal from the family court's order imposing a monthly child support obligation on Appellant, the Court of Appeals vacated and remanded. Appellant and Appellee were previously married and the parents of one child when Appellee petitioned for the dissolution of the marriage in 2022. Shortly thereafter, the parties entered a Marital Settlement Agreement (MSA) resolving custody, timesharing, child support, and division of property. Of note, the MSA provided for "[n]o child support to be set" and for the parties to share equally in daycare expenses for the minor child. The family court entered a dissolution decree incorporating the MSA.

More than one year later, Appellee moved for the family court to set child support. Appellant argued that the parties had expressly waived child support in the MSA, and there had been no change in material circumstances justifying a modification. After a hearing on the issue, the family court entered an order on March 6, 2024, which granted the motion and set child support in the amount of $754.00, retroactive to the previous November. The order did not include any references to a change in the parties' circumstances.

The Court of Appeals held that the family court erroneously treated Appellee's motion as falling under KRS 403.212, as though no order respecting child support had ever been entered. When a prior decree addresses child support, whether by agreement or judicial determination, any subsequent request for change must be treated as a motion to modify under KRS 403.213. The family court's failure to apply the correct statutory framework required the Court to vacate the order and remand for further proceedings. Additionally, the Court directed the family court on remand to enter specific findings of fact and conclusions of law as to whether Appellant rebutted the statutory presumption regarding material change in circumstances under KRS 403.213(2).

B. *LANCE RICHARD MOTTER v. VICTORIA CRUSE MOTTER (Ky. App. 2025).*

2024-CA-1369-MR 9/12/2025 2025 WL 2626832

Opinion Reversing and remanding by THOMPSON, CHIEF JUDGE; ACREE, J. (CONCURS) AND McNEILL, J. (CONCURS)

The Court of Appeals reversed and remanded an order denying a motion to set aside a judgment which divided marital assets during a divorce proceeding. Appellant, a nonresident of Kentucky, did not participate in the divorce case and later sought to set aside the division of marital assets for lack of personal jurisdiction. Appellant claimed KRS 454.220 applied and the trial court did not have personal jurisdiction over him. KRS 454.220 is a long-arm statute applying to family court proceedings "involving a demand for support, alimony, maintenance, distributive awards, or special relief" and requires that the action be brought within one year after the nonresident spouse leaves Kentucky. Appellant argued that the action was brought more than one year after he left the state; therefore, the court had no personal jurisdiction over him. The trial court denied the motion holding that KRS 454.210, Kentucky's general long-arm statute applied and the division of marital assets was not a proceeding included in KRS 454.220. The Court of Appeals reversed holding that KRS 454.220 and its one-year limitation period applied because the division of marital assets was a distributive award for the purposes of that statute.

III. IMMUNITY

A. ***J. CHRIS LANE, ET AL. v. KENTUCKY DEPARTMENT OF CORRECTIONS, ET AL. (Ky. App. 2025).***

2024-CA-0597-MR 9/19/2025 2025 WL 2678860

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

DISCRETIONARY REVIEW GRANTED 04/15/2026

In a direct appeal from the trial court's order granting summary judgment to all respondents, the Court of Appeals affirmed in part, reversed in part, and remanded. The case stemmed from an incident in which a felony probationer, Keyshaun Stewart, shot two individuals, killing one and injuring the other, while under supervision by the Kentucky Department of Corrections (KDOC). Stewart's supervising probation officer, Christopher Mull, received information that Stewart had been arrested prior to this incident for a felony in Tennessee, yet he failed to report Stewart's arrest to the Commonwealth or the trial court. Similarly, when Stewart pleaded guilty to the Tennessee felony, and Mull failed to report this conviction to the Commonwealth or the trial court.

Following the shooting, KDOC conducted an internal investigation and discovered that Mull had failed to report in accord with KDOC policies, and Mull's employment was terminated. The surviving victim of the shooting and the estate of the deceased victim filed suit against KDOC and several of its employees, including Mull, asserting

negligence, negligence *per se*, vicarious liability, and negligent hiring, supervision, and retention. The trial court granted summary judgment to KDOC and all other respondents on the basis of sovereign immunity. The trial court also found that there was no special relationship between the KDOC employees and the victims sufficient to impose a legal duty, which meant the respondents were not liable as a matter of law. The trial court did not reach the issue of qualified immunity, and it found insufficient evidence to support the negligent hiring and vicarious liability claims.

On appeal, Appellants declined to challenge the dismissal of all claims except those against Mull and his supervisors: Director Hargis, Supervisor Patterson, and Assistant Supervisor Ryan. Appellants contended that genuine issues of material fact preclude summary judgment on their claims for negligence, negligent supervision, and vicarious liability, and that the trial court erred in concluding these Appellees owed no legal duty to Appellants as a matter of law. For their part, Appellees contended that the trial court correctly determined the question of duty, and furthermore it was unnecessary to reach the issue of duty regarding Director Hargis, Supervisor Patterson, and Assistant Supervisor Ryan because they were entitled to qualified immunity.

The Court of Appeals held the supervisors were entitled to qualified official immunity, reasoning that these respondents were acting within the scope of their discretionary authority, and there was no evidence of bad faith in their actions. However, because Mull's duty to report was unquestionably ministerial, he was not entitled to qualified immunity.

The Court of Appeals also considered the application of the special relationship exception to the public duty doctrine and determined that the special relationship exception is not confined to a single factual scenario. While custody of the victim remains the most straightforward basis for finding a duty, Kentucky precedent also supports the conclusion that custody of the perpetrator, substantial governmental control, or the plaintiff's reasonable reliance on a governmental undertaking may suffice. Following its analysis, the Court determined that the supervisory relationship between Mull and Stewart fell within the type of special relationship giving rise to a legal duty. However, the Court also determined that liability did not automatically follow from a finding of legal duty, and there were other questions regarding causation which must be addressed as a question of material fact by a jury. The Court of Appeals remanded the matter to the trial court for further proceedings.

IV. PAROLE

A. JOSEPH HOLLAND v. KENTUCKY PAROLE BOARD (Ky. App. 2025).

2024-CA-0943-MR 9/5/2025 2025 WL 2552160

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

Appeal in a parole revocation case from an order dismissing Holland's declaratory judgment action against the Parole Board as moot. Holland asserted below that the Parole Board had not heard his case within 60 days of being returned to state custody pursuant to KRS 439.440. This Court affirmed, holding that Holland's remedy was limited to a mandamus action to force the Parole Board to act, rather than a declaratory action. Because the Parole Board had already issued its decision, albeit shortly outside of the 60-day period, Holland's petition was moot. The Court also addressed the use of its opinions that have been depublished by the Supreme Court of Kentucky, discussing *Normandy Farm, LLC v. Kenneth McPeek Racing Stable, Inc.*, 701 S.W.3d 129, 137 (Ky. 2024), and the holding that because a party relied heavily upon a depublished opinion, the Court would consider its reasoning, but it discouraged reliance upon such opinions.