

SUPREME COURT OF KENTUCKY

JANUARY 21, 2021 RULINGS

RELEASED: 10:00 A.M.

1. BRYAN KEITH SIMMS, EXECUTOR OF THE ESTATE OF JOHN ROBERT SIMMS
V.
ESTATE OF BRANDON MICHAEL BLAKE, ET AL.

[2018-SC-0478-DG](#)
TO BE PUBLISHED

SCOTT

**OPINION OF THE COURT BY
JUSTICE LAMBERT - AFFIRMING**

MINTON, C.J.; CONLEY, HUGHES, KELLER, LAMBERT, AND VANMETER, JJ., SITTING. ALL CONCUR. NICKELL, J., NOT SITTING.

Questions Presented:

Wrongful Death. Mandy Jo's Law. Preponderance of the evidence is the appropriate standard of proof when considering claims under Mandy Jo's Law; Mandy Jo's Law alters the statutory right to inherit, not the fundamental right to care and custody of a child. Trial court's failure to remove administrators from estate was harmless error where the adverse or antagonistic position of the administrator to the estate's other beneficiaries had ended due to a settlement of wrongful death claims. Father failed to establish the elements of equitable estoppel based upon the Mother's encouragement to forego a relationship with the son, where there was no evidence that the Mother concealed, failed to divulge, or framed her conduct in any way to mislead Father.

2. TIMOTHY HARGROVES, JR. V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0181-MR](#)
TO BE PUBLISHED

HARDIN

**OPINION OF THE COURT BY
JUSTICE NICKELL - AFFIRMING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Murder. Jury Instructions. Reenactments. *Miranda* Warnings. Trial court did not abuse its discretion in denying requested jury instructions on extreme emotional distress and voluntary intoxication where defendant's multiple statements consistently indicated that he did not act out of rage or anger a day following the alleged triggering event, and although the defendant may have consumed alcohol, proof did not show he was so drunk he did not know what he was doing. No palpable error occurred in questioning of detective about his charging decision, and trial court did not abuse its discretion in permitting a reenactment of the crime during the case-in-chief and subject to cross-examination. *Miranda* warning did not lose its efficacy between the arrest and transport of defendant.

3. ESTATE OF JOHN C. BENTON, JR. BY
MARY M. MARCUM AS EXECUTRIX V.
TIM THOMAS CURRIN, ET AL.

[2019-SC-0279-DG](#)
TO BE PUBLISHED

BOONE

**OPINION OF THE COURT BY
JUSTICE VANMETER - REVERSING
AND REMANDING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Civil Procedure. Revival of Claims. KRS 395.278. CR 25.01. A motion to substitute the executrix of a decedent's estate is sufficient to revive an action; a two-step process of a CR 25.01 motion and a separate motion pursuant to KRS 395.278 is not required. KRS 395.278 is a statute of limitation, and a motion for substitution properly filed with the court in accordance with CR 25.01(1) within the one year allotted by the legislature constitutes revival.

4. FORD MOTOR COMPANY V.
DEBORAH DUCKWORTH, ET AL.

[2019-SC-0357-WC](#)
TO BE PUBLISHED

COURT OF
APPEALS

**OPINION OF THE COURT BY
JUSTICE HUGHES - AFFIRMING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Workers Compensation. Cumulative Trauma Injury. Administrative Law Judge (ALJ) had the authority to determine the manifestation date of the employee's cumulative trauma injury, and properly applied KRS 342.185(1) by relying on medical evidence in the record to identify the manifestation date as when employee was advised by a physician that her cumulative injury was work-related (not previous dates where employee self-diagnosed that her injuries were work-related). ALJ further properly applied KRS 342.185(1) in determining that the employee filed her claim within two years of the date of the last temporary total disability payment. Employer was not deprived of due process because it had adequate notice and ample opportunity to be heard on the statute of limitations issue where the dates of injury were listed as being at issue in the Benefit Review Conference Order and employer filed a special answer to specifically assert a notice and statute of limitations defense.

5. PLEASANT UNIONS, LLC V.
KENTUCKY TAX COMPANY LLC, ET
AL.

[2019-SC-0358-DG](#)
TO BE PUBLISHED

TAYLOR

**OPINION OF THE COURT BY
JUSTICE HUGHES - REVERSING AND
REMANDING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Proof of Mailing. Foreclosure. Summary judgment in favor of a third-party purchaser of a certificate of tax delinquency was not appropriate where “proof of mailing” pursuant to KRS 134.490 was established by an affidavit from the purchaser’s attorney that he had caused notices to be sent by first-class mail. When notice sent by first-class mail is a person’s right under Kentucky statute, proof of the means employed to effect such notice must reflect specific actions taken to accomplish the mailing, such as proof of a standard office mailing procedure designed to ensure that the notices are properly addressed and mailed by first-class mail, sworn to by someone with personal knowledge of the business procedure, as well as proof of compliance with that regular business procedure in the specific instance.

6. SHAYNE BLACKABY V.
NANCY BARNES

[2020-SC-0004-DGE](#)
TO BE PUBLISHED

SHELBY

**OPINION OF THE COURT BY
JUSTICE VANMETER - REVERSING
AND REMANDING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Grandparent visitation. Adoption. Under circumstances involving a maternal grandmother’s adoption of a child which was being contested by the father at the time of his death, with no notice to the paternal grandfather of either the adoption proceeding or the possibility that ongoing visitation would not continue, the Court extends the stepparent adoption exception carved out in *Hicks v. Enlow*, 764 S.W.2d 68 (Ky. 1989).

7. CHARLES E. BROOKS BY
ELDERSERVE, INC., LEGAL
GUARDIANS V.
HONORABLE TARA HAGERTY,
JEFFERSON CIRCUIT COURT JUDGE,
FAMILY DIVISION 5, ET AL.

**OPINION OF THE COURT BY
JUSTICE KELLER - AFFIRMING**

ALL SITTING. ALL CONCUR.

[2020-SC-0065-MR](#)
TO BE PUBLISHED

COURT OF
APPEALS

Questions Presented:

Writ of Mandamus. Guardianship. Dissolution of Marriage. While affirming the denial of a writ of mandamus, the Court overrules *Johnson v. Johnson*, 170 S.W.2d 889 (Ky. 1943) to the extent it strictly prohibited a guardian from initiating an action for dissolution of marriage on behalf of a ward. Legislative changes to Kentucky's statutes have expanded guardian duties and the scope of guardianship proceedings in a more complex elder law environment. Accordingly, a guardian may seek permission from the district court overseeing guardianship to initiate a dissolution of marriage action on behalf of the ward, and the district court shall conduct a hearing to determine if such action is in the ward's best interest.

8. M. C. V.
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES, ET. AL.

AND

M. C. V. COMMONWEALTH OF
KENTUCKY, CABINET FOR HEALTH
AND FAMILY SERVICES, ET AL

AND

M. C. VS COMMONWEALTH OF
KENTUCKY, CABINET FOR HEALTH
AND FAMILY SERVICES, ET AL

**OPINION OF THE COURT BY
JUSTICE LAMBERT - REVERSING
AND VACATING**

ALL SITTING. ALL CONCUR.

[2020-SC-0191-DGE](#)
TO BE PUBLISHED

CALLOWAY

[2020-SC-0192-DGE](#)
TO BE PUBLISHED

CALLOWAY

[2020-SC-0193-DGE](#)
TO BE PUBLISHED

CALLOWAY

Questions Presented:

KRS 600.020(1). Abused or Neglected Child. Sufficiency of Evidence. Evidence of parent's consumption of alcohol was not sufficient to support a finding that the children were abused or neglected under the statute and did not warrant removal.

9. HARRY GULYARD, JR. V.
COMMONWEALTH OF KENTUCKY
- [2019-SC-0007-MR](#)
NOT TO BE PUBLISHED
- HARDIN
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING IN PART,
VACATING IN PART AND
REMANDING**
- ALL SITTING. ALL CONCUR.
10. LOWELL HARRIS V.
JAMES RIVER COAL, ET AL.
- [2019-SC-0369-WC](#)
NOT TO BE PUBLISHED
- COURT OF
APPEALS
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
11. ROBERT JAMIESON V.
COMMONWEALTH OF KENTUCKY
- [2019-SC-0582-MR](#)
NOT TO BE PUBLISHED
- HARDIN
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
12. MEGAN SHOEMAKER V.
KELLY SERVICES, INC., ET AL.
- [2019-SC-0630-WC](#)
NOT TO BE PUBLISHED
- COURT OF
APPEALS
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. MINTON, C.J.; CONLEY,
HUGHES, LAMBERT, NICKELL, AND
VANMETER JJ., CONCUR. KELLER, J.,
CONCURS IN RESULT ONLY.
13. HAYATTE KLEIER V.
MACY'S #562, ET AL.
- [2019-SC-0684-WC](#)
NOT TO BE PUBLISHED
- COURT OF
APPEALS
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.

14. DEQONTAY DUNNAWAY V.
COMMONWEALTH OF KENTUCKY
**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
ALL SITTING. ALL CONCUR.

[2019-SC-0730-MR](#)
NOT TO BE PUBLISHED

HARDIN

OPINION AND ORDERS - January 21, 2021

KENTUCKY BAR ASSOCIATION V.
ERIC TULEY WEINER

[2020-SC-0389-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

ORDER TEMPORARILY SUSPENDING

ALL SITTING. ALL CONCUR.

SHAMEKA LYNN O'NEIL V.
KENTUCKY BAR ASSOCIATION

[2020-SC-0425-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

ORDER OF PUBLIC REPRIMAND

ALL SITTING. ALL CONCUR.

SEBASTIAN MIDHUN JOY V.
KENTUCKY BAR ASSOCIATION

[2020-SC-0537-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**SUSPENDING FOR 181 DAYS, PROBATED
FOR 1 YEAR WITH CONDITIONS**

MINTON, C.J.; HUGHES, KELLER,
LAMBERT, NICKELL AND VANMETER, JJ.,
SITTING. ALL CONCUR. CONLEY, J., NOT
SITTING.

LINDSEY SCOTT V. KENTUCKY BAR
ASSOCIATION

[2020-SC-0566-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**SUSPENDING FOR 180 DAYS, PROBATED
FOR 2 YEARS WITH CONDITIONS**

ALL SITTING. ALL CONCUR.

PETITION FOR REHEARING DENIED - January 21, 2021

THE FAMILY TRUST FOUNDATION OF
KENTUCKY, INC., D/B/A THE FAMILY
FOUNDATION V.
THE KENTUCKY HORSE RACING
COMMISSION, ET AL.

[2018-SC-0630-TG](#)

FRANKLIN

MINTON, C.J.; HUGHES, KELLER,
LAMBERT, NICKELL, AND VANMETER JJ.,
SITTING. ALL CONCUR. CONLEY, J., NOT
SITTING.

CHRISTOPHER LUTIN V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0442-MR](#)

JEFFERSON

MINTON, C.J.; HUGHES, KELLER,
LAMBERT, NICKELL, AND VANMETER JJ.,
SITTING. ALL CONCUR. CONLEY, J., NOT
SITTING.

ORDER DISMISSING - January 08, 2021

KENTUCKY AUTHORITY FOR
EDUCATIONAL TELEVISION V.
ESTATE OF PATRICK WISE, ET AL.

[2020-SC-0245-D](#)

FRANKLIN

**ORDER GRANTING PARTIES' JOINT
MOTION TO DISMISS**

HUGHES, KELLER, LAMBERT, AND
NICKELL, JJ., SITTING. ALL CONCUR.

MICHAEL VAUGHAN V.
HONORABLE KAREN CONRAD, ET. AL.

[2020-SC-0326-MR](#)

OLDHAM

**ORDER DISMISSING DUE TO
DEFICIENCY**

HUGHES, KELLER, LAMBERT, AND
NICKELL, JJ., SITTING. ALL CONCUR.