

Supreme Court of Kentucky

JULY 9, 2020 MINUTES

RELEASED: 10:00 A.M.

68. TERRENCE DOWNS V. [2018-SC-000402-MR](#) JEFFERSON
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**
OPINION OF THE COURT BY JUSTICE
VANMETER– REVERSING AND
REMANDING
ALL SITTING. ALL CONCUR.

Questions Presented:

First-degree Manslaughter, Tampering with Physical Evidence, Possession of a Handgun by a Convicted Felon, and Second-degree Persistent Felony Offender. Reversal warranted due to Sixth Amendment violation where Appellant was denied the right to conflict-free counsel at a critical stage of the proceedings — during an in-chambers hearing the trial court conducted on the fitness and ability of his private attorney to try the case. On remand, the trial court is directed to address any remaining claims of error that may arise regarding jury instructions. Trial court did not abuse its discretion by allowing the introduction of a prior recorded phone call through a particular witness.

69. SEILLER WATERMAN, LLC, ET AL.; [2018-SC-000538-DG](#) JEFFERSON
PAMELA M. GREENWELL; GORDON C. [2018-SC-000558-DG](#)
ROSE; AND PAUL J. HERSHBERG V. **TO BE PUBLISHED**
RLB PROPERTIES, LTD.
OPINION OF THE COURT BY JUSTICE
HUGHES – AFFIRMING IN PART,
REVERSING IN PART, AND
REINSTATING
ALL SITTING. ALL CONCUR.

Questions Presented:

Wrongful Use of Civil Proceedings (WUCP). Attorney Professional Negligence. KRS 413.245 Statute of Limitation. Plaintiff brought action against former adversary's attorneys. The trial court did not err by dismissing the action. Neither the desire to earn attorney fees nor the filing of a claim seeking damages on behalf of a client constitutes an improper purpose sufficient to sustain a WUCP claim. A professional negligence claim may not be brought against an attorney by a party who is neither the client nor an intended third-party beneficiary of the attorney's work. KRS 413.245, the one-year statute of limitations applicable to the rendering of professional services, remains applicable to claims against attorneys when malice is alleged.

70. RANDY OVERSTREET, ET AL. V. JEFFREY MAYBERRY, ET AL. AND BRENT ALDRIDGE, ET AL. V. JEFFREY MAYBERRY, ET AL. [2019-SC-000041-TG](#) [2019-SC-000042-TG](#) FRANKLIN
TO BE PUBLISHED
OPINION OF THE COURT BY CHIEF JUSTICE MINTON– REVERSING AND REMANDING
ALL SITTING. ALL CONCUR.

Questions Presented:

Constitutional Standing. Members of Kentucky Retirement Systems' defined-benefit plan did not have constitutional standing to bring claims for alleged fiduciary misconduct that resulted in loss to the retirement system's plan assets. The Court remanded the case to the Franklin Circuit Court with direction dismiss the case.

71. MICHAEL GREENE V. ELIZABETH BOYD, FORMERLY GREENE [2019-SC-000379-DG](#) OLDHAM
TO BE PUBLISHED
OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING
ALL SITTING. ALL CONCUR.

Questions Presented:

Family Law. Child Custody. Evidence. Hearsay statements contained in report and testimony of Friend of Court are admissible in a contested child custody hearing, provided that parties are given sufficient notice and an opportunity to cross the sources of the hearsay. When testifying and submitting a report in a child custody matter, Friend of Court's ability to render opinions is constrained by KRE 701 and 702, but the court's appointment of Friend of Court amounts to a determination that the person is qualified to render opinions about the parent's ability to care for their children. Family court did not err in admitting and considering Friend of Court's testimony and report containing hearsay statements and opinion about parent's ability to care for her child.

72. ALEXANDRA LAWSON V. HON. RICHARD A. WOESTE, JUDGE, CAMPBELL CIRCUIT COURT, FAMILY DIVISION, AND JEREMY VILLARREAL [2019-SC-000670-MR](#) CAMPBELL
TO BE PUBLISHED
OPINION OF THE COURT BY JUSTICE HUGHES – AFFIRMING
ALL SITTING. ALL CONCUR.

Questions Presented:

Family Law. Writ of Prohibition. Uniform Child-Custody Jurisdiction and Enforcement Act. A circuit court's decision that it continues to have jurisdiction over a child custody matter under the UCCJEA is an exercise of a court's subject-matter jurisdiction. A circuit court's determination that it has "exclusive, continuing jurisdiction" over a child custody matter pursuant to KRS 403.824(1)(a) is a decision of particular-case jurisdiction by the court. First-class writ relief is not appropriate where a party is challenging a circuit court's determination that it has subject-matter jurisdiction under UCCJEA. Second-class writ relief is also not appropriate where appellant has adequate remedy through pending appeal on the merits.

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| 73. | TIMOTHY NOLAN V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2018-SC-000321-MR
NOT TO BE PUBLISHED | CAMPBELL |
| 74. | JULIUS CATLETT, JR. V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
ALL SITTING. MINTON, C.J.;
HUGHES, LAMBERT, NICKELL,
VANMETER, AND WRIGHT, JJ.,
CONCUR. KELLER, J., CONCURS
IN RESULT ONLY. | 2018-SC-000670-TG
NOT TO BE PUBLISHED | CHRISTIAN |
| 75. | JEFFREY JONES V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000076-TG
NOT TO BE PUBLISHED | MARION |
| 76. | DANIEL GENE PERDUE V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2019-SC-000274-MR
NOT TO BE PUBLISHED | CALDWELL |

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| 77. | JUSTIN BOWLIN V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
MINTON, C.J.; HUGHES,
LAMBERT, NICKELL, VANMETER,
AND WRIGHT, JJ., SITTING.
MINTON, C.J.; HUGHES, NICKELL,
VANMETER, AND WRIGHT, JJ.,
CONCUR. LAMBERT, J.,
CONCURS IN PART AND
DISSENTS IN PART.
KELLER, J., NOT SITTING. | 2019-SC-000309-MR
NOT TO BE PUBLISHED | KENTON |
| 78. | JOHN GOBLE V. HON. JEREMY
MATTOX, SCOTT COUNTY
CIRCUIT COURT JUDGE AND
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – <u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2020-SC-000078-MR
NOT TO BE PUBLISHED | COURT OF
APPEALS |

OPINIONS AND ORDERS – JULY 9, 2020

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| ERIC SHANE GRINNELL V.
KENTUCKY BAR ASSOCIATION
OPINION AND ORDER
SUSPENDING WITH
CONDITIONS
ALL SITTING. ALL CONCUR. | 2019-SC-000677-KB
TO BE PUBLISHED | IN SUPREME
COURT |
| CARROLL HUBBARD, JR. V.
KENTUCKY BAR ASSOCIATION
OPINION AND ORDER OF
PERMANENT DISBARMENT
MINTON, C.J.; HUGHES,
KELLER, LAMBERT,
VANMETER, AND WRIGHT, JJ.,
SITTING. ALL CONCUR.
NICKELL, J., NOT SITTING. | 2020-SC-000148-KB
TO BE PUBLISHED | IN SUPREME
COURT |

COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW – JULY 1, 2020:

HALEY BELT V. CINCINNATI INSURANCE COMPANY	2019-SC-000426-D	BULLITT
KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION V. MICHAEL NICHOLS, ET AL. LAMBERT, J., AND NICKELL, J., NOT SITTING. MINTON, C.J., HUGHES, KELLER, VANMETER J., AND WRIGHT, JJ., AND JEFFREY EDWARDS AND FREDERICK HIGDON, SJ. SITTING.	2019-SC-000477-D	JEFFERSON
APRIL LYNCH V. GEICO GENERAL INSURANCE COMPANY	2019-SC-000502-D	JEFFERSON
TAMMY LYNN RAMEY V. JOHN DOE, A MINOR	2020-SC-000211-D	JEFFERSON
COMMONWEALTH OF KENTUCKY V. ALISHA DOEBLER	2020-SC-000025-D	JEFFERSON
KEENELAND ASSOCIATION, INC. V. ROY J. PRATHER, ET AL. AND SALLEE HORSE VANS, INC. V. ROY J. PRATHER, ET AL. VANMETER, J., NOT SITTING.	2020-SC-000067-D 2020-SC-000075-D	FAYETTE
AMERICAN NATIONAL UNIVERSITY OF KENTUCKY, INC. V. COMMONWEALTH OF KENTUCKY, EX REL. DANIEL CAMERON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF KENTUCKY	2020-SC-000145-D	FAYETTE

LINDA DAVIS V. PROGRESSIVE
DIRECT INSURANCE
COMPANY

2020-SC-000168-D

WAYNE

COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW – JULY 1, 2020

JACOB CARDENAS V.
COMMONWEALTH OF
KENTUCKY

2019-SC-000363-D

KENTON

JENNIFER ALLEN, ET AL. V.
LOUISVILLE-JEFFERSON
COUNTY METROPOLITAN
SEWER DISTRICT

2019-SC-000443-D

JEFFERSON

DEPARTMENT OF REVENUE,
FINANCE AND
ADMINISTRATION CABINET,
COMMONWEALTH OF
KENTUCKY V. RENT-A-CENTER
EAST, INC. ET AL.

2019-SC-000461-D

FRANKLIN

WILLIAM EARLY PATTEN V.
PATRICIA ANN NAVE

2019-SC-000492-D

FAYETTE

KEITH FISHBURN, ET AL. V.
JOE IVES, ET AL.

2019-SC-000524-D

WARREN

BILLY TRENT CONSTRUCTION,
LLC V. RHONDA KEENEY, ET
AL.

2019-SC-000532-D

SCOTT

ALAN STANDIFER V.
COMMONWEALTH OF
KENTUCKY

2019-SC-000545-D

JEFFERSON

CHARLES MICHAEL FEE, ET
AL. V. RICHARD D. CHEATHAM,
JR., ET AL.

2019-SC-000564-D

LAUREL

LOUIS ANDERSON V.
COMMONWEALTH OF
KENTUCKY

2019-SC-000565-D

MERCER

STACY DEVINE V. COMMONWEALTH OF KENTUCKY	2019-SC-000592-D	BOYLE
K. PETROLEUM, INC. V. SIMON VANDERPOOL, ET AL.	2019-SC-000600-D	WHITLEY
EDWIN JOHN RUSSELL III V. COMMONWEALTH OF KENTUCKY	2020-SC-000022-D	GRAVES
PULASKI PROPERTIES, INC. V. NEIL HANEY, ET AL.	2020-SC-000029-D	PULASKI
COMMONWEALTH OF KENTUCKY V. GREGORY THIEMANN	2020-SC-000030-D	JEFFERSON
LESLYE HARBIN V. COMMONWEALTH OF KENTUCKY	2020-SC000034-D	JEFFERSON
WILLIAM GRUNDY V. METROPOLITAN LIFE INSURANCE COMPANY WRIGHT, J., WOULD GRANT DISCRETIONARY REVIEW. NICKELL, J., NOT SITTING.	2020-SC-000042-D	JEFFERSON
CECIL SALYERS, JR. V. COMMONWEALTH OF KENTUCKY	2020-SC-000048-D	HOPKINS
WADE ALVIN STEVENSON V. COMMONWEALTH OF KENTUCKY NICKELL, J., NOT SITTING.	2020-SC-000063-D	FAYETTE
HARGADON, LENIHAN & HERRINGTON, PLLC, ET AL. V. KEVIN M. ADAMS LAMBERT, J., NOT SITTING.	2020-SC-000068-D	JEFFERSON
JOHN DOE, ET AL. V. STERLING WARD, ET AL.	2020-SC-000085-D	FAYETTE

DERRICK PATTERSON V. COMMONWEALTH OF KENTUCKY	2020-SC-000095-D	JEFFERSON
C.B. V. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2020-SC-000103-DE	WOODFORD
JERMAINE JACKSON V. COMMONWEALTH OF KENTUCKY	2020-SC-000109-D	JEFFERSON
J.T. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2020-SC-000112-DE	HARDIN
BARRY WETHINGTON V. COMMONWEALTH OF KENTUCKY	2020-SC-000121-D	POWELL
REX CARRENDER V. COMMONWEALTH OF KENTUCKY KELLER AND NICKELL, JJ., WOULD GRANT DISCRETIONARY REVIEW. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2020-SC-000125-D	WAYNE
ARTHUR CARTER V. COMMONWEALTH OF KENTUCKY	2020-SC-000142-D	LEE
DENVARD SCOTT PETERS V. COMMONWEALTH OF KENTUCKY	2020-SC-000143-D	LEE
BRIAN TABOR V. COMMONWEALTH OF KENTUCKY	2020-SC-00152-D	CAMPBELL

CARL OSBORNE V.
COMMONWEALTH OF
KENTUCKY

2020-SC-000159-D

CHRISTIAN

KEVIN ROWE V.
COMMONWEALTH OF
KENTUCKY

2020-SC-000188-D

PIKE

COURT ORDERS DENYING PETITION FOR REHEARING – JULY 9, 2020

MICHAEL TORRENCE V.
COMMONWEALTH OF
KENTUCKY
**ORDER DENYING PETITION
FOR REHEARING**
ALL SITTING. ALL CONCUR.

2018-SC-000322-MR

JEFFERSON

LEDBETTER WATER DISTRICT
V. CRITTENDEN-LIVINGSTON
WATER DISTRICT
**ORDER DENYING PETITION
FOR REHEARING**
MINTON, C.J.; HUGHES,
KELLER, LAMBERT,
VANMETER, AND WRIGHT, JJ.,
SITTING. VANMETER, J.,
WOULD GRANT REHEARING.
NICKELL, J., NOT SITTING.

2018-SC-000494-DG

LIVINGSTON

WILLIAM MATTINGLY V.
COMMONWEALTH OF
KENTUCKY
**ORDER DENYING PETITION
FOR REHEARING**
ALL SITTING. ALL CONCUR.

2019-SC-000242-MR

JEFFERSON

COURT ORDERS ENTERED

COMMONWEALTH OF
KENTUCKY V. JUSTIN SMITH
**ORDER DENYING MOTION TO
STAY ENFORCEMENT**
HUGHES, KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.
ENTERED: JULY 1, 2020

2017-SC-000537-TG

FAYETTE

JEFFREY C. MAYBERRY, ET AL.
V. HON. PHILLIP J. SHEPHERD
**ORDER DISMISSING APPEAL AS
MOOT**
ALL SITTING. ALL CONCUR.
ENTERED: JULY 9, 2020

2019-SC-000232-MR

COURT OF
APPEALS

KENTUCKY DEPARTMENT OF
CORRECTIONS, ET AL. V. RALPH
BAZE, ET AL.
**ORDER GRANTING JOINT
MOTION TO DISMISS**
HUGHES, KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.
ENTERED: JULY 2, 2020

2019-SC-000458-TG

FRANKLIN

COMMONWEALTH OF
KENTUCKY, ET AL. V. RALPH
BAZE, ET AL.
**ORDER GRANTING JOINT
MOTION TO DISMISS**
HUGHES, KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.
ENTERED: JULY 2, 2020

2019-SC-000459-TG

FRANKLIN

RAUL SANCHEZ V. HON.
KIMBERLY BUNNELL, ETC.
**ORDER GRANTING MOTION TO
WITHDRAW APPEAL**
HUGHES, KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.
ENTERED: JULY 2, 2020

2020-SC-000044-MR

COURT OF
APPEALS

GINI G. GRACE V.
COMMONWEALTH OF
KENTUCKY, TRANSPORTATION
CABINET, DEPARTMENT OF
HIGHWAYS, ET AL.
**ORDER GRANTING
RECONSIDERATION**
HUGHES, KELLER, VANMETER J.,
AND WRIGHT, JJ., SITTING. ALL
CONCUR.
ENTERED: JUNE 30, 2020

2020-SC-000079-D

MCCRACKEN

EUGENIO MAYOR V. V. CARL A.
KIHM, DPM AND UNIVERSITY
FOOT AND ANKLE CENTER, LLC
**ORDER DENYING MOTION TO
TRANSFER**
ALL SITTING. ALL CONCUR.
ENTERED: JULY 6, 2020

2020-SC-000122-T

JEFFERSON

J.B. V. C.T.L., SR., ET AL.
**ORDER GRANTING
APPELLANT'S MOTION TO
DISMISS**
HUGHES, KELLER, LAMBERT,
AND NICKELL, JJ., SITTING. ALL
CONCUR.
ENTERED: JULY 2, 2020

2020-SC-000198-TGE

CHRISTIAN

LAURA LEWIS MAZE V.
COMMONWEALTH OF
KENTUCKY
**ORDER DENYING
ENLARGEMENT OF TIME TO
FILE MOTION FOR
DISCRETIONARY REVIEW**
HUGHES, LAMBERT, NICKELL,
AND VANMETER, JJ., SITTING.
ALL CONCUR.
ENTERED: JULY 2, 2020

2020-SC-000199-D

BATH

DR. JAMES R. BEAN, M.D. V.
HON. JULIE M. GOODMAN,
JUDGE, FAYETTE CIRCUIT
COURT DIVISION IV, ET AL.

2020-SC-000214-MR

COURT OF
APPEALS

**ORDER GRANTING
APPELLANT'S MOTION TO
DISMISS**

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

ENTERED: JULY 2, 2020