

**KENTUCKY SUPREME COURT
AUGUST 2022**

CRIMINAL LAW:

Jackie W. Jerome III v. Commonwealth of Kentucky
[2021-SC-0306-MR](#)

August 18, 2022

Opinion of the Court by Justice Keller. All sitting; all concur. Jackie Jerome (Jackie) was convicted of burglary in the first degree, rape in the first degree, kidnapping, violation of an EPO/DVO, and terroristic threatening. He appealed his conviction arguing that the trial court erred in refusing to instruct the jury on the lesser included offense of burglary in the third degree and dismissing a juror during penalty phase deliberations and then deciding on its own Jackie’s sentence.

The Supreme Court held that the trial court did not err in refusing to instruct the jury on burglary in the third as a less included offense of burglary in the first degree because the evidence presented did not justify an instruction on that lesser offense. Therefore, the Court affirmed Jackie’s conviction.

However, the Supreme Court held that the trial court failed to sufficiently inquire into the juror’s potential partiality or unfairness before excusing her during deliberations. Therefore, the Court vacated Jackie’s sentence and remanded to the trial court for a new sentencing phase.

Donald Ray Violettt v. John Grise, et al.
[2021-SC-0425-MR](#)

August 18, 2022

Opinion of the Court by Justice VanMeter. All sitting; all concur. On appeal from the judgment of the Court of Appeals denying Donald Ray Violettt’s motion for a writ of mandamus against the Warren Circuit Court, the Supreme Court affirmed, albeit on different grounds. The current matter arises from Violettt’s pro se “Notice to Submit Documents to Support Motion for New Trial” filed in the trial court, in relation to his 1993 conviction for 141 counts of first-degree sexual abuse and five counts of first-degree rape. The trial court denied the submission, stating that “[n]o new trial motion is pending before this Court, nor will one be accepted because this issue has been litigated for decades, and relief denied to the defendant (see prior orders).” The trial court further ordered “that the Clerk shall not accept these documents or pleadings, or any future ones, without a specific order of the Court and shall return same to the defendant.” Notably, in the three decades following his convictions, Violettt has filed more than eighty-four appeals and original actions in an attempt to relitigate his convictions. In 2016, a panel of the Kentucky Court of Appeals finally sanctioned Violettt, directing the Clerk of the Court of Appeals to convene a three-judge panel to review whether all actions filed by Violettt (original or appeals) are frivolous and must be summarily dismissed. *Violettt v. Grise*, 2015-CA-0670-MR (Ky. App. Sep. 21, 2016). In the present action, the Court of Appeals, relying on its 2016 sanction order, dismissed Violettt’s petition for a writ as frivolous. The Supreme Court affirmed on procedural grounds, noting that following the entry of the trial court’s September 21, 2020, Order, Violettt was required to file his appeal within thirty days, CR 73.02(1)(a), *i.e.*, on or before October 21, 2020. Because he failed to do so, automatic dismissal is

the prescribed sanction. The Court further affirmed the imposition of sanctions on Violett for his long history of frivolous and vexatious appeals, and the lower courts' exemption of other affected parties from responding. However, because of its concern with the summary dismissal of frivolous pleadings, observing that too cursory of a review process could serve to deprive a litigant meaningful access to the courts and to his right to appeal, the Court directed the lower courts to permit the filing of the pleadings in the record, even without responsive pleadings, so that any further review as may be undertaken would be based on as complete a record as possible. In short, the courts shall review a pleading and may, if appropriate, relieve the opposing party from any duty to respond.

DEPENDENCY, NEGLECT AND ABUSE:

Commonwealth of Kentucky, Cabinet for Health and Family Services v. L.G., et al.

AND

J.M. v. L.G., et al.

[2021-SC-0530-DGE](#)

[2021-SC-0533-DGE](#)

August 18, 2022

Opinion of the Court by Justice Keller. All sitting; all concur. Over the course of several years, L.G. and her son, H.M., made numerous allegations of abuse, including sexual abuse, against H.M.'s father, J.M. Child Protective Services (CPS) did not substantiate any of the allegations until the last one. During its investigation into this last allegation, CPS also began an investigation into L.G. for emotional abuse of H.M. CPS worried that L.G. was manipulating H.M. into making and supporting false claims against his father and using the allegations to get back at J.M. after arguments.

After a dependency, abuse, or neglect action was filed against each parent, the Jefferson Family Court found that L.G. emotionally abused H.M. and that J.M. did not abuse him. L.G. appealed the finding of abuse against her, and the Court of Appeals reversed. The Supreme Court granted discretionary review.

The Supreme Court held that the family court's findings were not clearly erroneous nor were its actions an abuse of discretion. The Court explained that the family court heard and received numerous claims regarding the ways in which L.G.'s behavior served to impair H.M. The trial court found that H.M. was deprived of his ability to have a stable and appropriate relationship with his father and was encouraged to deceive and manipulate those around him. L.G. intentionally impeded any attempts to remedy these harms in H.M.'s therapy, only worsening his ability to overcome deficits in his ability to "function within a normal range of performance and behavior. Based on this evidence, the Supreme Court reversed the Court of Appeals and reinstated the orders of the family court.

EMPLOYMENT LAW:

Constance Mouanda v. Jani-King International, et al.

[2021-SC-0089-DG](#)

August 18, 2022

Opinion of the Court by Justice Hughes. All sitting; all concur. Constance Mouanda is the sole owner of The Matsoumou's, LLC (the LLC), an entity she was required to form in order to purchase the rights to operate a Jani-King commercial cleaning franchise

from Cardinal Franchising. Jani-King sells master franchisees, like Cardinal, the right to operate as a Jani-King sub-franchisor in an exclusive territory. Having never realized the profits promised under the Franchise Agreement with Cardinal, Mouanda individually filed suit in Jefferson Circuit Court for fraud, breach of contract, and unconscionability. In addition, she sought damages for Cardinal and Jani-King's failure to comply with Kentucky wage and hour laws. The trial court granted Cardinal's and Jani-King's motion to dismiss based on Mouanda's failure to bring the suit on behalf of the LLC and the Court of Appeals affirmed.

The Supreme Court held that the trial court erred in dismissing Mouanda's claims. Mouanda asserted a wage and hour claim that belonged to her individually, not a claim that belonged to the LLC. Although the plain language of the Kentucky Wage and Hour Act explicitly excludes franchisees as employees of a franchisor, the franchisee is not Mouanda, it is the LLC. This case also requires consideration of whether Mouanda is an employee or an independent contractor and the application of the economic realities test. *Keller v. Miri Microsystems, LLC*, 781 F.3d. 799, 806 (6th Cir. 2015). In assessing the true nature of the parties' relationship, courts must look at the practical, not just contractual, realities of the relationship. The Franchise Agreement alone suggests that Cardinal maintained a significant degree of control over the day-to-day activities of the LLC in performing cleaning services. The allegations in Mouanda's complaint, namely that Cardinal never offered her enough cleaning contracts to fulfill its obligations to the LLC under the Franchise Agreement, are sufficient to survive a motion to dismiss. On remand, the trial court must apply the economic realities test and examine the true nature of Mouanda's working relationship with the purported employer, rather than relying on the contractual label or structures applied to the relationship.

TORTS:

Primal Vantage Company, Inc. v. Kevin O'Bryan, et al.

AND

Kevin O'Bryan v. Primal Vantage Company, Inc., et al.

AND

Sante' O'Bryan v. Primal Vantage Company, Inc., et al.

[2020-SC-0247-DG](#)

[2021-SC-0064-DG](#)

[2021-SC-0065-DG](#)

August 18, 2022

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Civil appeal. Discretionary review granted. In this products liability case, Primal Vantage appealed from a decision of the Court of Appeals affirming the trial court's judgment that awarded substantial damages to Kevin O'Bryan and Santé O'Bryan.

On discretionary review, the Supreme Court affirmed the Court of Appeals' holding regarding the jury instructions on the failure-to-warn claims and the apportionment of fault to the Martins—the landowners where the accident occurred. The Supreme Court also affirmed the trial court's directed verdict to Defendants on the design defect claims but reversed the holding of the Court of Appeals in all other respects as to Primal Vantage. Accordingly, the trial court's judgment was reversed, and the action was remanded to the trial court for a new trial.

First, the Court concluded that the trial court erred by abandoning its role as evidentiary gatekeeper and allowing the jury to hear substantial evidence regarding other accidents and injuries involving ladderstands that the trial court concluded were inadmissible at the end of trial. Still, the Court clarified that trial courts enjoy broad discretion in making evidentiary determinations and there is no exact chronological procedure mandating when trial courts must make evidentiary determinations.

Second, the Supreme Court concluded that the trial court's jury instructions regarding failure to warn were not erroneous. The Court explained that since negligence and strict liability are distinct, yet closely related, legal concepts, it was not error for the trial court to provide separate instructions for recovery under each theory.

Third, the Court concluded that the lower courts correctly concluded that fault could not be apportioned to the Martins, the owners of the land and ladderstand at issue under KRS 150.645(1). KRS 150.645(1) provides that landowners—like the Martins—who give permission for others to hunt on their land owe no duty of care to keep the premises safe.

Fourth, the Court affirmed the trial court's directed verdict in favor of Primal Vantage on plaintiff's design defect claims because it was not clearly erroneous. Finally, the Court declined to consider assignments of error regarding Santé O'Bryan's loss of consortium claims and Primal Vantage's arguments regarding allegedly improper references to China and Chinese locations at trial. The Court acknowledged that it consistently considers moot issues that are likely to recur upon retrial. But the Court explained that consideration of those moot issues was inappropriate because it was not likely those issues would recur since recurrence of those issues was dependent upon proof to be presented upon retrial.

Dolores Zepeda v. Central Motors, Inc.
[2021-SC-0204-DG](#)

August 18, 2022

Opinion of the Court by Justice Conley. Minton, C.J.; Conley, Keller, Lambert, Nickell and VanMeter, JJ., sitting. All concur. Hughes, J., not sitting. In this case, the Court of Appeals affirmed the summary judgment of the trial court. The Court of Appeals agreed with the lower court that Central Motors, Inc. had substantially complied with all the requirements of KRS 186A.220 and had delivered possession of the vehicle. Therefore, Central Motors, Inc. was no longer the statutory owner of the vehicle at the time of the accident.

The Supreme Court affirmed the Court of Appeals. It held that Central Motors had substantially complied with KRS 186A.220(1) by giving notice to the county clerk's office of its acquisition of a vehicle when it submitted all the documents necessary to transfer ownership to Zepeda. And that by acting on behalf of the purchaser, Central Motors, Inc. had delivered all the necessary documents to the county clerk prior to the accident. Therefore, Central Motors had substantially complied with all the requirements of KRS 186A.220 and had delivered physical possession to the purchaser. Therefore, Central Motors, Inc. was no longer the statutory owner of the vehicle when it was involved in a fatal car accident.

ATTORNEY DISCIPLINE:

Kentucky Bar Association v. Eric Tuley Weiner

2022-SC-0161-KB

August 18, 2022

Opinion and Order of the Court. All sitting; all concur. The Board of Governors of the Kentucky Bar Association recommended that the Court find Weiner guilty of violating Supreme Court Rule (SCR) 3.130(1.15)(a); SCR 3.130(1.4)(a); 3.130(1.5)(f); SCR 3.130(1.16)(d); and two counts of SCR 3.130(8.1)(b). For these violations, which stemmed from two separate KBA disciplinary cases, the Board recommended Weiner be suspended from the practice of law for five years and be required to enter into and comply with a Kentucky Lawyers Assistance Program (KYLAP) Monitoring Agreement; attend and successfully complete the Ethics and Professionalism Enhancement Program (EPEP); pay restitution; and pay the costs of this action.

Weiner did not respond to the charges, nor did he seek review by the Court under SCR 3.370(8). Accordingly, the Court adopted the Board's decision in accordance with SCR 3.370(10).

Kentucky Bar Association v. Justin Ross Morgan

2022-SC-0187-KB

August 18, 2022

Opinion and Order of the Court. All sitting; all concur. Morgan's disciplinary case arose from two underlying circuit court matters relating to his failure to pay child support. After Morgan pled guilty to flagrant nonsupport, the Inquiry Commission issued a two-count Charge against him for violations of SCR 3.130(3.4)(c) and SCR 3.130(8.4)(b). Morgan admitted each of the facts in the Charge but qualified some admissions by stating that his failure to pay was the result of financial inability and that while he may have knowingly disobeyed the circuit court's orders, his disobedience was not willful.

Following a hearing before a Trial Commissioner, the KBA argued that Morgan should be permanently disbarred. Although Morgan argued for more lenient discipline, the Trial Commissioner agreed with the KBA and recommended that Morgan be permanently disbarred.

In reviewing the proposed discipline, the Supreme Court considered Morgan's disciplinary history, which included a 181-day suspension and a one-year suspension; its previous admonition regarding Morgan's "pattern of habitual nonpayment;" the amount of the child support arrearage; Morgan's conviction for flagrant nonsupport; and similar case law. The Court ultimately agreed with the Trial Commissioner's recommendation and ordered Morgan permanently disbarred from the practice of law.

Kentucky Bar Association v. Kurt Richard Denton

2022-SC-0211-KB

August 18, 2022

Opinion and Order of the Court. All sitting; all concur. Denton was hired by a client to represent him in a child custody case. After the client paid a retainer, Denton did some work on the case but failed to appear for hearings and trial dates as the case progressed. The client's attempts to contact Denton were unsuccessful, as were his attempts to retrieve his file from Denton. The Inquiry Commission issued a Charge

against Denton asserting violations of SCR 3.130(1.3), 3.130(1.4), 3.130(1.16)(d), and 3.130(8.1)(b).

The Board of Governors unanimously recommended that Denton be found guilty of all counts. The Board further recommended that Denton be suspended from the practice of law for 61 days, that he attend and successfully complete the Ethics and Professionalism Enhancement Program; that he enter into and comply with a Kentucky Lawyer Assistance Program Monitoring Agreement; and that he refund the client fee and pay all costs associated with this matter.

Upon review of the record, and in consideration of the fact that Denton did not present any mitigating circumstances, the Supreme Court agreed with the Board's recommendation and sanctioned Denton accordingly.

James Roach, II v. Kentucky Bar Association
[2022-SC-0268-KB](#)

August 18, 2022

Opinion and Order of the Court. All sitting; all concur. In this case, James Roach II, seeks readmission to the practice of law in the Commonwealth of Kentucky. He was suspended for failure to pay bar dues on March 24, 1992. Since then, Roach has neither resided in, nor practiced law in the Commonwealth of Kentucky and does not intend to practice here if readmitted. Rather, Roach now resides in Missouri and is seeking admission to the bar there and cannot be admitted unless his suspension in Kentucky is resolved.

Roach has met all the requirements for readmission save one. He must sit for and receive a passing score on the bar examination. While the Board of Governors voted unanimously to accept the recommendation from the Character and Fitness Commission to waive the requirement to sit for the bar examination, the Supreme Court disagreed. The Supreme Court held that the exception under SCR 3.500(3)(e) was inapplicable to Mr. Roach. This waiver is available for applicants only after *withdrawal* pursuant to SCR 3.480. Mr. Roach was suspended and is therefore ineligible. The Supreme Court ordered the matter referred to the Board of Bar Examiners, and should Mr. Roach receive a passing score, the Supreme Court will reconsider the application.

Jason Paul Price v. Kentucky Bar Association
[2022-SC-0270-KB](#)

August 18, 2022

Opinion and Order of the Court. All sitting; all concur. Price moved the Court under SCR 3.480(2) for a two-year suspension from the practice of law in order to resolve a number of disciplinary cases. Price had been suspended since August 2015, when the Supreme Court temporarily suspended him after finding that his conduct as alleged in a pending criminal case posed a substantial threat of harm to his clients or the public. Since the time of his suspension, Price has been working on rehabilitating and maintaining his commitment to sobriety. He has also been committed to repaying his clients, agreeing to a monthly payment plan to ensure payment in full.

As part of a negotiated sanction with the KBA, Price asked the Court to impose upon him a suspension for a further period of two years, with any reinstatement to be

conditioned upon his having provided proof of repayment to his clients. Price's reinstatement would also be conditioned upon his continued participation in and compliance with drug and alcohol treatment, and successful completion of the Ethics and Professionalism Enhancement Program and the Trust Account Management Program. The KBA did not object to Price's motion or his proposed sanction.

The Supreme Court considered the record, including a number of similar cases that supported Price's motion for an additional two-year suspension. Noting Price's participation in the disciplinary proceedings, his efforts to address his substance use disorder, and his agreement to refund all unearned fees, the Court agreed that the proposed sanction was appropriate. Accordingly, Price was suspended from the practice of law for an additional period of two years, with conditions.