

**KENTUCKY SUPREME COURT  
FEBRUARY 2024**

**CIVIL CHILDHOOD SEXUAL ABUSE:**

**LINDA THOMPSON, ET AL. V. SAMANTHA KILLARY**

**2022-SC-0308-DG**

**February 15, 2024**

Opinion of the Court by Chief Justice VanMeter. All sitting. Conley, Lambert, and Thompson, JJ., concur. Keller, J., concurs in result only. Nickell, J., concurs by separate opinion in which Thompson, J., joins. Bisig, J., concurs in part and dissents in part by separate opinion.

On review from the Court of Appeals' reversal of the trial court's order of dismissal of Defendants (now Appellees) due to the running of the statute of limitations for Killary's claim of childhood sexual abuse, the Supreme Court reversed. As a child, Killary was subjected to sexual abuse at the hands of her adoptive father, Rick Jackman, which only ended when Killary turned 18 in 2009. In 2017, the General Assembly amended the statute creating a civil action for childhood sexual abuse, KRS 413.249, to create a new triggering event: the conviction of the abuser. In 2018, Jackman was convicted of offenses related to the abuse. In that same year, Killary brought this action for childhood sexual abuse against Jackman and others alleged to have failed to stop or report the abuse. Appellees moved to dismiss. The trial court granted dismissal, finding the prior version of KRS 413.249 applied and that the action was time-barred. Killary appealed. During the pendency of the appeal, the statute was again amended, this time to add actions against third parties, to expressly make the 2017 amendments retroactive, and to allow for revival of time-barred claims. A divided Court of Appeals reversed the trial court. The majority found Appellees had a vested right in the old statute of limitations, KRS 413.140(1)(a) (2007 amend.), but not the new limitation period created by the 2021 amendments and thus remanded the matter to the trial court to determine whether those parties owed a duty to Killary under the present KRS 413.249(5). The Supreme Court reversed the Court of Appeals, holding that although the Legislature made the 2017 amendments retroactive, Appellees held a vested right in their statute of limitations defense that could not be taken away by the General Assembly. Under the 2007 version of the statute in effect when the statute of limitations on Killary's claims first began to run, an action against Appellees needed to have been within five years. When that did not occur, Appellee's right to a statute of limitations defense vested and could not be divested by later actions of the Legislature. Accordingly, the claims against Appellees were properly dismissed.

**CRIMINAL:**

**KORY E. HELMICK V. COMMONWEALTH OF KENTUCKY**

**2022-SC-0504-MR**

**February 15, 2024**

Opinion of the Court by Justice Keller. VanMeter, C.J.; Bisig, Keller, Lambert, Nickell, and Thompson, JJ., sitting. All concur. Conley, J., not sitting.

Kory E. Helmick was convicted of two counts of sodomy in the third degree, one count of sodomy in the first degree, one count of sexual abuse in the first degree, and one count of unlawful use of an electronic communication system to procure a minor to engage in sexual or other prohibited activity. Helmick received a total sentence of thirty-one years in prison. His conviction stemmed from sexual abuse he perpetrated against J.K., a foster child who was placed in his home. On appeal to the Kentucky Supreme Court, Helmick alleged the trial court erred in denying his motion to continue the trial. Second, he alleged that insufficient proof was adduced at trial to support the conviction of sodomy in the first degree. Finally, he alleged his right to be free from double jeopardy was violated when he was convicted of both sodomy in the first degree and sodomy in the third degree.

The Supreme Court affirmed Helmick’s convictions. The Court determined that the trial court did not err in denying Helmick’s motion to continue because the motion was not accompanied by an affidavit as required by Kentucky Rule of Criminal Procedure (RCr) 9.04. The Supreme Court further held that J.K.’s testimony that he was “incapacitated” and “incapable of moving” satisfied the “physically helpless” element of sodomy in the first degree, and therefore the trial court did not err in denying Helmick’s motion for a directed verdict on that charge. Finally, the Supreme Court held that Helmick’s double jeopardy rights were not violated because the jury instructions made clear that each conviction was based on a single, independent criminal act.

**COMMONWEALTH OF KENTUCKY V. AHMAD RASHAD DAVIS**

**2023-SC-0178-DG**

**February 15, 2024**

Opinion of the Court by Justice Keller. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

Ahmad Rashad Davis was indicted on one count of Medicaid fraud and one count of theft by deception. Davis and the Commonwealth entered into a plea agreement, Davis pleaded guilty to Medicaid fraud, and his theft by deception charge was dismissed. The trial court’s judgment did not specify the circumstances underlying the dismissal of that theft by deception charge. Years later, Davis filed a petition to expunge his theft by deception charge.

KRS 431.076(1) makes eligible for expungement only those dismissed charges that were not dismissed “in exchange for a guilty plea to another charge.” The trial court, relying solely on the language of the sentencing court’s judgment, granted Davis’s expungement petition.

The Supreme Court granted review to consider whether the trial court was precluded, as a matter of law, from looking beyond the sentencing court’s judgment in determining whether Davis’s dismissed charge was dismissed “in exchange for a guilty plea to another charge.” The Supreme Court held that trial courts, in determining expungement eligibility, are not prohibited from considering other evidence outside of the sentencing court’s final judgment of conviction. Accordingly, the Supreme Court vacated the trial court’s order granting Davis’s expungement.

**BENNETT D. COUCH V. COMMONWEALTH OF KENTUCKY**

**2023-SC-0237-MR**

**February 15, 2024**

Opinion of the Court by Chief Justice VanMeter. All sitting. Bisig, Conley, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only.

This matter of right appeal challenged the trial court’s failure to suppress the fruits of a search of Couch’s electronic devices. Couch further challenged the constitutionality of KRS 531.330 and KRS 531.340, alleged prosecutorial misconduct, and alleged the trial court failed to consider her Presentence Investigation Report. The Supreme Court affirmed. Couch became the subject of an investigation after Kenton County police received a tip that pornographic images of minors were circulating online. Police were able to connect the social media account circulating the images to Couch. Subsequent search warrants allowed police to examine Couch’s electronic devices which confirmed that Couch possessed and distributed matter portraying a sexual performance by a minor. Prior to trial, Couch moved to suppress evidence collected pursuant to the warrants. Couch also challenged the constitutionality of KRS 531.330 and 531.340, but failed to provide the required notice to the Attorney General pursuant to KRS 418.075. The trial court denied the suppression motion and Couch entered a conditional guilty plea. Couch was sentenced to 20 years’ imprisonment and appealed as a matter of right. The Supreme Court affirmed the trial court. As to the constitutionality of KRS 531.330 and 531.340, recognizing that the Court refuses to address arguments that a statute is unconstitutional unless these notice provisions are fully satisfied, the Court declined to reach the constitutional question as Couch failed to provide notice to the Attorney General. As to the sufficiency of the search warrants, the Court found the warrants were supported by probable cause because police had linked the IP address used to post illegal material to Couch; the warrants were not required to identify the criminal statutes violated, although the warrants

here did in any event; and finally, the warrants established a nexus between posting the illegal material and Couch’s residence because the IP address linked to Couch was also linked to that residence. Regarding alleged errors by the prosecution and the trial court’s failure to consider Couch’s PSI, Couch failed to identify in the record where those errors occurred, and accordingly the Court declined to address the issues.

**INSURANCE:**

**JAMES NATHAN (“REBEL”) COMBS V. TERESA SPICER**

**2022-SC-0438-DG**

**February 15, 2024**

Opinion of the Court by Justice Thompson. All sitting. Bisig, Conley, Keller, Lambert, and Nickell, JJ., concur. VanMeter, C.J., concurs in result only.

Combs operated an ATV while intoxicated which resulted in the death of his wife Tiara Combs. In order for Tiara’s estate to recover insurance proceeds, Combs’s mother-in-law, Teresa Spicer, acting in her capacity as a co-administrator of Tiara’s estate, released both the carrier and Combs from further liability for the deadly accident. Spicer, in her personal capacity, later sued Combs under a theory of Intentional Infliction of Emotional Distress (IIED) alleging that he misled her about the cause of the wreck. The Breathitt Circuit Court dismissed Spicer’s complaint, ruling that the earlier release barred her claim.

The Court of Appeals reversed, and Combs sought and was granted discretionary review.

Following oral argument, this Court affirmed the Court of Appeals decision on the basis that Spicer only entered the release as “Personal Representative of the Estate” and not in her individual capacity. Further, while the release did state that Spicer signed the release not only “on behalf of the Estate” but also on behalf of “its principals, agents, successors, heirs, personal representatives,” the only claims released were those possessed by the estate, not Spicer’s personal claims.

**MEDICAL MALPRACTICE:**

**RODNEY MCMILLIN, M.D. V. MARIO SANCHEZ, ET AL.**

**2022-SC-0272-DG**

**February 15, 2024**

**AND**

**MARIO SANCHEZ V. RODNEY MCMILLIN, M.D., ET AL.**

**2022-SC-0274-DG**

**February 15, 2024**

Opinion of the Court by Justice Conley. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

The trial court dismissed a medical malpractice claim because the plaintiff failed to file a certificate of merit as required by KRS 411.167. The Court of Appeals affirmed in part and reversed in part the trial court's judgment. The Court of Appeals affirmed the trial court's determination that a certificate of merit is required to be filed with the complaint but reversed and remanded back to the trial court in order to consider whether the plaintiff should be afforded more time to file the certificate under CR 6.02.

The Supreme Court affirmed in part and reversed in part. The Supreme Court affirmed the Court of Appeals holding that the certificate of merit is required to be filed with the complaint by all parties, whether represented by counsel or not, but reversed the Court of Appeals decision to remand it back to the trial court. The Supreme Court held that the purpose of KRS 411.167 was to prevent the filing of meritless lawsuits and, therefore, the requirements of the statute must be strictly complied with.

**HUGH KEITH MCWHORTER, ET AL. V. BAPTIST HEALTHCARE SYSTEM, INC. D/B/A BAPTIST HEALTH LEXINGTON**

**2022-SC-0354-DG**

**February 15, 2024**

Opinion of the Court by Justice Conley. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

The trial court dismissed the plaintiffs' medical malpractice claim for failing to file a certificate of merit with the complaint as required by KRS 411.167. The Court of Appeals affirmed the judgment of the trial court holding that the certificate of merit needs to be filed with the complaint.

The Supreme Court affirmed the Court of Appeals, though on different grounds. Although the Supreme Court agreed that the certificate of merit is required to be filed with the complaint, they ultimately held that the Appellant failed to adequately preserve their issues.

**ATTORNEY DISCIPLINE:**

**INQUIRY COMMISSION V. JAMES CAROL WORTHINGTON**

**2023-SC-0506-KB**

**February 15, 2024**

All sitting. All concur.

The Kentucky Bar Association Inquiry Commission petitioned the Supreme Court for the temporary suspension of James Worthington. The Inquiry Commission detailed how Worthington drafted and made himself trustee over a trust. Worthington admits he misappropriated funds totaling more than \$184,000. In another matter, Worthington acted as both executor and attorney for an estate. When he was replaced as executor, the new executors discovered discrepancies involving \$151,000 in withdrawals.

The Court temporarily suspended Worthington from the practice of law pursuant to SCR 3.165(1)(a).

**CHARLOTTE DARLENE JOHNSON V. KENTUCKY BAR ASSOCIATION**

**2023-SC-0554-KB**

**February 15, 2024**

All sitting. All concur.

Charlotte Johnson moved the Supreme Court for consensual discipline pursuant to SCR 3.480. Johnson was initially charged with ten counts of misconduct stemming from one case. She asked the Court to impose discipline for five of those counts and dismiss the remaining five. She proposed a sanction of a sixty-day suspension, with thirty days to serve and thirty probated for two years and payment of costs. The Kentucky Bar Association agreed with Johnson. The Court accepted the proposed sanctions as adequate.

In the underlying case, Johnson had undertaken the representation of a married couple in a bankruptcy action. Johnson missed several filing deadlines and failed to carry through on action discussed with her clients. Specifically, Johnson failed to file a notice to convert a Chapter 13 bankruptcy to Chapter 7 once it was evident her clients could not make the payments under the debt restructuring plan.

Johnson admitted her conduct violated SCR 3.130(1.1) in her several failures to file the appropriate motion to convert the case to Chapter 7, SCR 3.130(1.2) for her failure to abide by the agreed objective of her representation, and SCR 3.130(1.3) for her failure to exercise reasonable diligence in complying with the bankruptcy court's order. The Court dismissed Counts 4 and 5 based on mitigating circumstances. The Court found Johnson committed violations of SCR 3.130(1.16) for failing to take reasonable steps to protect her clients and Count 7 for violating SCR 3.130(3.1) for bringing a claim she knew was without basis in fact. Because Johnson had been the sole-caregiver for her ailing (and now deceased) mother, the Court found mitigating circumstances as to the other five counts and dismissed them.

The Court agreed the negotiated sanction was appropriate and suspended Johnson from the practice of law for sixty days, with thirty probated and thirty to serve.

## **NICHOLAS SCOTT CALMES V. KENTUCKY BAR ASSOCIATION**

**2023-SC-0555-KB**

**February 15, 2024**

All sitting. All concur.

Nicholas Scott Calmes and the Kentucky Bar Association negotiated a sanction to resolve two pending disciplinary proceedings against Calmes. Calmes moved the Supreme Court to enter the sanction and the Court agreed it was adequate for Calmes's violations.

A client hired Calmes to represent him in a contractual dispute. Calmes misrepresented to the client that the case had been filed, there were court dates scheduled, and the other party was interested in a settlement. The client later discovered all that information was false. The Inquiry Commission issued a three-count charge against Calmes alleging he violated SCR 3.130(1.3) by failing to represent his client's interests promptly and diligently, SCR 3.130(8.4)(c) by misrepresenting the facts to his client, and SCR 3.130(8.1)(b) by failing to respond to a lawful request for information in the disciplinary process. Calmes admitted to these violations.

In the second KBA file open against Calmes, he represented a client in a property dispute. Calmes sent a warning letter to a trespassing neighbor but did not follow through with filing suit as he promised his client. The Inquiry Commission issued a two-count charge against Calmes for violating SCR 3.130(1.3) for failing to diligently act on behalf of his client and SCR 3.130(8.1)(b) for failing to respond to a lawful demand for information from a disciplinary authority. Calmes admitted to these violations.

Calmes and the KBA negotiated a sanction in which Calmes would be suspended for thirty days, probated for two years with conditions. The Court agreed this discipline was appropriate and granted the motion.