KENTUCKY SUPREME COURT
MARCH 2024

CIRCUIT COURT CLERK:

IN RE: JOSEPH "JS" FLYNN, PULASKI CIRCUIT COURT CLERK

2022-SC-0426-OA **March 14, 2024**

VanMeter, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Nickell, JJ., concur. Thompson, J., concurs in result only. Lambert, J., not sitting.

Upon receipt of employee complaints, the Administrative Office of the Courts conducted an investigation and concluded that Pulaski Circuit Court Clerk Joseph "JS" Flynn engaged in unlawful workplace harassment and retaliation and created a hostile work environment. The Administrative Office of the Courts referred the matter to the Supreme Court, which then commenced an original action pursuant to Section 114(3) of the Kentucky Constitution to determine whether Flynn should be removed from office. The Supreme Court appointed a Special Commissioner to conduct an evidentiary hearing and requested that the Attorney General serve as Special Advocate to represent the interests of the Commonwealth. Following a three-day evidentiary hearing, the Special Commissioner recommended Flynn's removal from office. Following additional briefing, the Supreme Court held that because the matter was an original action, it was subject to *de novo* review. The Supreme Court further held that the Special Advocate had the burden of proof to show good cause for Flynn's removal by clear and convincing evidence. Following review of the entirety of the three-day evidentiary hearing, the Supreme Court found this standard satisfied. First, the Supreme Court concluded Flynn created a hostile work environment by sexually and physically assaulting a subordinate employee on at least two occasions, and by engaging in repeated unwelcome physical touching of and sexually charged and humiliating comments to other subordinate employees. Second, the Supreme Court also concluded Flynn engaged in quid pro quo harassment by materially altering the conditions of employment for a subordinate employee who ended a relationship with him. Finally, the Supreme Court further concluded Flynn failed to perform his duties with courtesy and respect when he chased, yelled at, and cursed at a subordinate employee in front of co-workers and the public. The Supreme Court therefore removed Flynn as Pulaski Circuit Court Clerk and declared that office vacant.

CONTRACT LAW:

WALTER SWYERS V. ALLEN FAMILY PARTNERSHIP #1, LLC, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF STATION PLACE LLC, ET AL.

2022-SC-0478-DG **March 14, 2024**

AND

HYSINGER GROUP V. ALLEN FAMILY PARTNERSHIP #1, LLC, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF STATION PLACE LLC, ET AL.

2022-SC-0479-DG **March 14, 2024**

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

Appellees appealed from a judgment of the Jefferson Circuit Court calculating the appropriate distribution to LLC members of proceeds from the sale of the LLC's commercial real estate asset. The Court of Appeal reversed, and Appellant appealed to the Supreme Court. Appellant argued that pursuant to written contracts, the sale proceeds should be distributed according to each member's ownership interest in the LLC up to an $8 million *sale price* threshold, with amounts above that distributed one-third each to the original three LLC members. Appellees argued the contracts set forth an $8 million *cash received* threshold for these distributions. The Supreme Court, applying Indiana law, held that the trial court correctly concluded the written contracts set forth an $8 million sale price threshold. The Supreme Court thus reversed the Court of Appeals, affirmed the trial court's holding, and remanded for entry of a judgment correcting a purely mathematical error in the trial court's original judgment.

CRIMINAL LAW:

LANCE BOWMAN V. COMMONWEALTH OF KENTUCKY

2023-SC-0073-MR **March 14, 2024**

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

Bowman was convicted of murder, tampering with physical evidence, being a convicted felon in possession of a firearm, and being a first-degree persistent felony offender in relation to the shooting death of James Mentee, Jr. The shooting occurred at a bar owned by Mentee, and the events leading up to and immediately following the shooting were captured by the bar's security

cameras. After Bowman pointed his gun at Mentee's head at close range, he and Mentee began struggling over the gun and ended up out of frame such that the shooting itself was not captured, nor was any audio. Bowman was shot in the foot/ankle area by one of the bar's security guards as he was walking away from the bar after the shooting. Bowman testified in his own defense that Mentee accidentally shot himself during the struggle.

The Court first held that the trial court did not err by denying in part Bowman's motion to suppress two statements he made to law enforcement at the hospital on the night of the shooting pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966) because Bowman was not in custody for *Miranda* purposes during the first statement and because the officer did not ignore an unequivocal invocation of his right to remain silent during the second statement. The Court next held that the trial court erred by allowing the lead detective to narrate portions of the bar's security camera footage without having the requisite personal knowledge to do so under KRE 701 and KRE 602, but the error was not palpable. Third, the Court held that the trial court did not err by providing the jury with an initial aggressor limitation instruction because Bowman's act of pointing a gun at Mentee's head at close range was sufficient to satisfy KRS 503.010's definition of "physical force," i.e., "force. . . directed toward the body of another person." Finally, the Court held that the trial court violated RCr 9.88 in the manner it polled the jury following each phase of Bowman's trifurcated trial, but those errors were not palpable.

WRIT OF PROHIBITION:

JUSTIN ALDAVA V. ANGELA JOHNSON, ET AL.

2023-SC-0251-MR **March 14, 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 Court of Appeal's determination that Kentucky had jurisdiction under the UCCJEA to hear a custody matter involving the minor child, H.A. H.A. was born in Texas in 2019. H.A.'s father is a wind turbine blade technician whose job requires him to relocate for indefinite periods of time. When H.A. was around 1 year old, H.A.'s parents relocated to Washington for the father's job. The family stayed in Washington for little over 4 months before returning to Texas. When H.A.'s father was again dispatched to another site 1 month after the family returned, H.A.'s mother took the child to Kentucky and sought an EPO against the father. As part of the EPO petition, mother also sought temporary custody of H.A., which the court granted. The Father subsequently initiated custody proceedings in Texas, thus two parallel custody proceedings were active in Kentucky and

Texas. Mother sought a determination in Kentucky as to which state had jurisdiction under the UCCJEA. The family court determined the family's relocation to Washington severed H.A.'s Texas residency and the child had not resided anywhere long enough to have a home state for UCCJEA purposes. Accordingly, the family court found the EPO was the sole basis for jurisdiction over H.A. and jurisdiction for custody matter was properly in Kentucky. Father filed an original action for a writ of prohibition with the Court of Appeals. The Court of Appeals denied the writ, finding the Texas courts had not assumed jurisdiction over H.A. and sufficient evidence supported the family court's determination. Following denial of the writ, Father then sought a UCCJEA jurisdiction determination from the Texas court which found the trip to Washington to have been a temporary absence from Texas, thus making Texas H.A.'s home state and granting Texas jurisdiction over the custody dispute. In the midst of this jurisdictional morass, the Supreme Court affirmed the Court of Appeals. Recognizing that Kentucky courts have never definitively addressed the standard to be applied when analyzing a "temporary absence" under the UCCJEA, the Court settled upon an objective standard that emphasizes simply where the child was living in the six months preceding the child custody proceeding and eschews a subjective analysis of the parents' intent and other factors. Applying this simplified standard, the Court found that H.A.'s relocation to Washington interrupted his residency in Texas such that no state could assert initial, home state jurisdiction over H.A. Accordingly, the sole basis for any state to assert jurisdiction was the temporary custody order in the EPO and Kentucky rightfully has jurisdiction over the custody of H.A.

WORKERS' COMPENSATION:

LEWIS HICKS V. KEMI, ET AL. **March 14, 2024**

2023-SC-0284-WC

Opinion of the Court by Justice Nickell. VanMeter, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. VanMeter, C.J.; Bisig and Conley, JJ., concur. Keller, J., dissents by separate opinion in which Thompson, J., joins. Lambert, J., not sitting.

Hicks worked in a Kentucky coal mine for about twenty-one years before he was asked to transfer to a mine in West Virginia owned by a subsidiary of his employer. Although he remained a Kentucky resident, for seventeen months he commuted and worked as an underground foreman in West Virginia six days and sixty hours a week. He would occasionally visit the Kentucky headquarters or other mines of the parent company for safety training or to pick up supplies for the West Virginia mine. He sustained a work-related injury in the West Virginia mine and did not return to work. Hicks filed a claim for workers' compensation benefits in Kentucky. The employer and its insurance company moved to dismiss for lack of jurisdiction as the accident

did not occur in this state and the extraterritorial coverage statute—KRS 342.670—could not save the claim. The ALJ concluded Hicks' employment was "principally localized" in Kentucky and awarded benefits. The Board affirmed. The Court of Appeals reversed and remanded upon concluding the ALJ and Board had misconstrued KRS 342.670 and erred in concluding the employment was principally localized in Kentucky.

On discretionary review, the Supreme Court affirmed the Court of Appeals. The sole question to be addressed was in which state Hicks' employment was "principally localized" for purposes of KRS Chapter 342 benefits. In analyzing the language of the statute, the Supreme Court held for employment to be principally localized in a particular state, the employer must have a place of business in that state from which the employee regularly works at or from, and such inquiry is limited to the employee's status at the time of injury. Under the facts of this case, because the employer had a place of business in both Kentucky and West Virginia, the question became where Hicks "regularly" worked at or from. Because nearly all of Hicks' work was completed in West Virginia and he performed no "substantial" work in Kentucky, the Supreme Court concluded his employment was principally localized in West Virginia, thereby precluding application of the extraterritorial coverage provisions of KRS 342.670. Therefore, the employee was not entitled to apply for or receive benefits under KRS Chapter 342.

ATTORNEY DISCIPLINE:

IN RE: RONNIE LEE GOLDY, JR.

2024-SC-0048-KB **March 14, 2024**

All sitting. All concur.

Ronnie Lee Goldy was convicted of multiple felonies in federal court. SCR 3.166(1) provides, in pertinent part, "[a]ny member of the Kentucky Bar Association who . . . is convicted by a judge or jury of a felony . . . shall be automatically suspended from the practice of law in this Commonwealth." The suspension is automatic, begins the day after a guilty plea or finding of guilt, and remains in effect until "dissolved or superseded by order of the Court." *Id.* Accordingly, Ronnie Lee Goldy, Jr. was automatically suspended from the practice of law.