KENTUCKY SUPREME COURT
OCTOBER 2024

CRIMINAL LAW:

WILLIAM SLOSS V. COMMONWEALTH OF KENTUCKY

2023-SC-0012-MR **October 24, 2024**

Opinion of the Court by Justice Lambert. All sitting. Bisig, Conley, and Thompson, JJ., concur. Nickell, J., dissents by separate opinion in which VanMeter, C.J., and Keller, J., join.

William Sloss was convicted of murder, abuse of a corpse, and of being a first-degree persistent felony offender in relation to the death of his girlfriend Amanda Berry; he was sentenced to fifty years' imprisonment. After review, the Supreme Court held: (1) Sloss' Sixth Amendment right to be present during the guilt phase of his trial, the penalty phase of his trial, and his sentencing was not violated as he voluntarily, knowingly, and intelligently waived his right to be present; (2) RCr 8.28(1) does not require a trial court to hold a formal evidentiary hearing to rule that a defendant has waived his or her Sixth Amendment right to be present; (3) the trial court held a sufficient hearing under RCr 8.28(1) and properly concluded that Sloss intentionally failed to appear, short of force, at his trial and sentencing; (4) the trial court did not err by denying Sloss' motion for a mistrial; (5) the trial court did not err by denying Sloss' motion for directed verdict for the charges of murder and abuse of a corpse; (6) the trial court did not err by allowing KRE 404(b) evidence of Sloss' physical abuse of Amanda prior to her death; (7) the trial court properly admitted Amanda's statement prior to her death that she intended to leave Sloss under the KRE 803(3) state-of-mind exception to hearsay; and (8) no cumulative error occurred.

LARAYNA MANNING V. COMMONWEALTH OF KENTUCKY

2023-SC-0144-MR **October 24, 2024**

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

Larayna Manning was convicted of complicity to murder and complicity to first-degree robbery in relation to the death of Calvin Taylor and was sentenced to life imprisonment. After review, the Supreme Court held: (1) the two year and two-month delay between Manning's arrest and trial did not violate her constitutional right to a speedy trial; (2) the Commonwealth provided adequate

KRE 404(c) notice of its intent to introduce prior bad act evidence and the introduction of that evidence did not constitute palpable error; (3) the Commonwealth improperly impeached Manning's former co-defendant pursuant to KRE 609, but the error was not palpable; (4) the Commonwealth improperly used evidence of Manning's former co-defendant's guilty plea as substantive evidence of her guilt pursuant to *Parido v. Commonwealth*, 547 S.W.2d 125 (Ky. 1977) and *Tipton v. Commonwealth*, 640 S.W.2d 818 (Ky. 1982), but the error was not palpable; and (5) the Commonwealth did not improperly comment on Manning's invocation of her right to remain silent.

PROBATE LAW:

DIANNA LYNN DAVENPORT, IN HER CAPACITY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PENNY ANN SIMMONS V. KINDRED HOSPITALS LIMITED PARTNERSHIP D/B/A KINDRED HOSPITAL-LOUISVILLE, ET AL.

2023-SC-0039-DG **October 24, 2024**

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

This appeal asked the Court to resolve when during probate proceedings an order of appointment becomes effective, at its signing by the judge or upon its notation into the civil docket by the clerk. The Supreme Court determined the order becomes effective at the time it is signed by the judge, affirming the Court of Appeals. Dianna Davenport was appointed the personal representative of the Estate of Penny Ann Simmons. The order of appointment was signed by the trial judge on September 11, 2018, but was not entered into the record by the clerk until September 21, 2018. On September 20, 2019, Davenport filed a medical malpractice/wrongful death suit against Kindred Hospitals on behalf of the Estate. The trial court granted Kindred's motion to dismiss, ruling Davenport had one year from the signing of the order to bring her action. The Court of Appeals affirmed. The Supreme Court held that although orders generally become effective upon their entry into the record pursuant to CR 58(1), an exception exists for special statutory proceedings wherein statutory directives can trump our rules pursuant to CR 1(2). Finding probate proceedings to be one such special statutory proceeding, the Court held that the provisions of KRS 395.105 controlled, and Davenport's appointment became effective with the judge's signature. Accordingly, Davenport had one year from September 11, 2018, to bring the action on behalf of the Estate, which she failed to do. The action was therefore time barred.

CONNIE CORNER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF THOMAS DUNBAR A/K/A "SAM" DUNBAR V. TYLER POPPLEWELL, ET AL.

2023-SC-0403-DG **October 24, 2024**

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

In this case "Sam" Dunbar died without issue and left a will leaving the entirety of his estate to Connie Corner. Tyler Popplewell was Dunbar's grandson and challenged the validity of the will alleging undue influence and fraud. Once the statute of limitations had lapsed, Corner filed a motion to dismiss based on Tyler's lack of statutory standing. The trial court granted the motion. Tyler appealed and the Court of Appeals reversed the trial court based on *Harrison v. Leach,* 323 S.W.3d 702 (Ky. 2010). In *Harrison,* the Kentucky Supreme Court held that the defense of statutory standing must be raised "at the outset of litigation." *Id.* at 708-09. Corner filed a motion for discretionary review which the Supreme Court granted. The Supreme Court affirmed the Court of Appeals and held that the defense of statutory standing must be raised in the response to the complaint or it is deemed waived.

FAMILY LAW:

JAY PICARD V. KATHERINE KNIGHT

2023-SC-0043-DG **October 24, 2024**

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

Jay Picard sought an award of attorney fees and costs in a child support modification matter pursuant to CR 68, the offer of judgment rule. The trial court denied this motion and the Court of Appeals affirmed. After granting discretionary review and oral argument, the Supreme Court concluded that KRS Chapter 403 generally, and KRS 403.220 specifically, preempt the offer of judgment rule from having any application to family law matters.

TORTS:

WOOSTER MOTOR WAYS, INC., ET AL. V. MICHAEL GONTERMAN, ET AL.

2023-SC-0062-DG **October 24, 2024**

Opinion of the Court by Chief Justice VanMeter. All sitting. All concur.

This appeal asked the Court to determine the boundaries of the Firefighter's Rule when an independent event causes injury to a first responder during the execution of his duties. Finding the Rule to not apply to independent acts of negligence, the Court affirmed the Court of Appeals. State Trooper Michael Gonterman was called to a scene on Interstate 71 involving loose dogs in the road along an overpass. Gonterman pulled his car onto the shoulder prior to the overpass and met with John Crawford who was attempting the corral the dogs. As the two were walking along the narrow overpass shoulder with the dogs, a car, box truck, and tractor trailer—following each other in that order at close distance—approached the scene. As the car approached, the driver pulled into the left lane and braked to match her speed with traffic. The drivers of the box truck and tractor trailer moved into the left lane as well. As the car slowed, the box truck was unable to match its deceleration and swerved into the right lane, braking hard. The tractor trailer was similarly unable to brake sufficiently and swerved into the right lane behind the slowed box truck. The tractor trailer impacted the box truck, pushing it onto its side and into Gonterman and Crawford. Crawford was killed by the impact and Gonterman was knocked off the overpass, causing serious injuries. Gonterman brought an action against the drivers of the trucks and their employers. The trial court granted the drivers summary judgment, ruling the Firefighter's Rule barred the claim. The Court of Appeals reversed, holding the drivers could not satisfy the test laid out in *Sallee v. GTE South, Inc.*, 839 S.W.2d 277 (Ky. 1992). The Supreme Court affirmed the Court of Appeals, holding the drivers of the trucks could not satisfy the first and third prongs of *Sallee*. As to the first prong, the Court determined the drivers were not part of the class of persons whom the Rule was meant to protect as they did not own or occupy the highway, nor did they have a direct connection to the dogs or request assistance with the dogs. Regarding the third prong, the Court held that the Rule does not extend to injuries caused by independent or intervening acts of negligence such as that of the truck drivers. Accordingly, the Rule did not apply the bar suit against the drivers and, by extension, their employers.

QUALIFIED OFFICIAL IMMUNITY:

JAIME MORALES V. CITY OF GEORGETOWN, KENTUCKY, ET AL.

2023-SC-0248-DG **October 24, 2024**

AND

LIEUTENANT JAMES WAGONER, INDIVIDUALLY AND IN HIS CAPACITY AS A LIEUTENANT WITH THE GEORGETOWN POLICE DEPARTMENT V. JAIME MORALES, ET AL.

2023-SC-0265-DG **October 24, 2024**

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

Former Scott County Sheriff's Deputy Jaime Morales was tragically shot in the line of duty, and paralyzed, during a September 2018 law enforcement operation to apprehend an alleged bank robber. Morales thereafter brought a negligence suit against multiple employees of the City of Georgetown ("City") and the Georgetown Police Department ("GPD"). The Scott Circuit Court entered summary judgment in favor of the defendants after concluding that they were each immune from Morales's claims. The Court of Appeals affirmed in part and reversed in part.

The Supreme Court thereafter granted review to consider whether the individual defendants were entitled to qualified official immunity and whether the City and the GPD were entitled to immunity under the Claims Against Local Government Act. The Supreme Court held that the police officer alleged to have inadvertently shot Morales was entitled to qualified official immunity from claims arising from his discretionary action of firing his service weapon. The Court also held that the Lieutenant who supervised the law enforcement operation leading up to Morales's injury was entitled to qualified official immunity from Morales's claims that he failed to adequately supervise his subordinates and failed to require them to don protective tactical vests during the operation. The Court also held that genuine issues of material fact precluded summary judgment on Morales's claims that the Lieutenant had breached his ministerial duties to create a plan or remove team members from the Special Response Team who had unexcused absences from trainings and missions. The Court further held that the City and the GPD could be held vicariously liable for their employees' negligence in carrying out their ministerial duties. Finally, the Court held that the Claims Against Local Governments Act immunized the City and GPD from Morales's claims that they

were directly negligent in causing his injuries. Accordingly, the Court remanded to the Scott Circuit Court for further proceedings.

STATUTE OF LIMITATIONS:

KENNETH L. RAMSEY, ET AL. V. DAPPLE STUD, LLC, ET AL.

2023-SC-0568-DG October 24, 2024

AND

HICKSTEAD FARM, INC. V. DAPPLE STUD, LLC, ET AL.

2023-SC-0569-DG October 24, 2024

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

On review from the Court of Appeals affirming the Fayette Circuit Court's summary judgment rulings in favor of Dapple Stud and Dapple Sales; order requiring Hickstead Farm and Ramsey pay restitution to Dapple Stud; and the dismissal of Hickstead Farm and Ramsey's third-party complaints against Mike Akers. The Supreme Court reverses the Court of Appeals' opinion affirming summary judgment in favor of Dapple Stud and Dapple Sales and orders for Hickstead Farm and Ramsey to pay restitution. The Supreme Court affirms the Court of Appeals' opinion upholding the Fayette Circuit Court's dismissal of Hickstead and Ramsey's third-party complaints against certain causes of action against Dapple Sales and all causes of action against Mike Akers. The central issue in this case is whether the Court of Appeals erred in granting summary judgment for Dapple Stud and Dapple Sales when Akers entered into consignment contracts with Hickstead Farm and Ramsey. The Fayette Circuit Court held Hickstead Farm and Ramsey did not enter into valid contracts with Dapple Stud and Dapple Stud did not receive the horse sales proceeds. The Court of Appeals affirmed the trial court's order rulings. The Supreme Court holds that Mike Akers, acting as Dapple Stud's manager, entered into valid consignment contracts with Hickstead and Ramsey. The terms of the consignment contracts were for the consigning agent to sell the horses at auction in exchange for a flat fee of $1,500 per horse and a commission of 3% for any amount over $20,000. Hickstead and Ramsey had prior dealings with Akers and knew he was Dapple Stud's manager. Dapple Stud and Dapple Sales were both structured as manager-managed LLCs. Under KRS 275.135(2)(b), Akers had authority as manager of Dapple Stud to carry on the usual way of business or affairs of the LLC. The fact that Akers subsequently misappropriated funds from Dapple Sales after it received checks for the horse

sales proceeds is immaterial. Dapple Stud was the consigning agent for Ramsey and Hickstead Farm. The Supreme Court affirms the lower courts' dismissal of third-party complaints against Dapple Sales and Akers because the causes of actions are barred by their applicable statute of limitations. Hickstead Farm and Ramsey filed the third-party complaints too late, and the relation-back doctrine does not save these complaints because Hickstead Farm and Ramsey cannot satisfy the mistake element of CR 15.03. Accordingly, the Supreme Court reverses the Court of Appeals' summary judgment rulings and orders to pay restitution but affirms the dismissal of the third-party complaints of certain causes of action against Dapple Sales and all causes of action against Akers.

WORKERS' COMPENSATION:

THOMPSON CATERING & SPECIAL EVENTS V. KIMMINEE COSTELLO, ET AL.

2024-SC-0147-WC **October 24, 2024**

Opinion of the Court by Justice Nickell. All sitting. All concur.

Appellant was sent by her employer to a work-related conference in Las Vegas. After the conference had concluded, but before her return flight to Kentucky, Appellant checked her baggage with hotel staff and left the hotel "for a few minutes" to buy souvenirs for family members. While exiting the hotel, Appellant suffered a serious ankle injury when she tripped and fell on stairs**.**

The ALJ dismissed Appellant's claim for Workers' Compensation benefits. The ALJ determined the travelling employee exception to the going and coming rule was inapplicable because Appellant's personal shopping errand constituted a substantial deviation from the work-related purpose of the trip.

Relying on foreign authority, the Board reversed the ALJ, and the Court of Appeals affirmed the Board. However, based solely on longstanding Kentucky precedent, the Supreme Court held the ALJ had misapplied the travelling employee exception, reinstated Appellant's claim, and remanded for further proceedings**.**

The Court explained determination of a *significant* deviation from a traveling employee's course of employment must be based upon the totality of circumstances, with no single factor being wholly determinative. Although the Appellant's intervening shopping errand was admittedly purely personal, the Court held other preeminent, undisputed, and relevant factors compelled a finding in Appellant's favor when weighed together. These amalgamated dispositive factors included the momentary duration of the personal errand,

the occurrence of the errand during a period of enforced hiatus from work-related activities, and the employee's compelled presence at a distant location to accomplish work-related activities for the employer's sole benefit.

DEATH PENALTY:

DEPARTMENT OF CORRECTIONS, ET AL. V. RALPH BAZE, ET AL.

2024-SC-0249-TG **October 24, 2024**

Opinion and Order of the Court by Justice Thompson. All sitting. All concur.

After the lethal injection protocols were changed, the Department of Corrections (DOC) requested that the Franklin Circuit Court dissolve a 2010 temporary injunction (which precluded an inmate's execution under Kentucky's then-current lethal-injection protocols). The circuit court "reserved ruling" on this motion. The DOC sought interlocutory relief from the Court of Appeals pursuant to the Rules of Appellate Procedure (RAP) 20(B), which empowered the Court of Appeals to grant an adversely affected party relief from a circuit court's interlocutory order which "has granted, denied, modified, or dissolved a temporary injunction[.]" The DOC argued the circuit court's order instituted a new injunction or modified its earlier injunction. The Court of Appeals recommended transfer of the matter to the Supreme Court under RAP 17 and it agreed to accept transfer. The Supreme Court dismissed the action without prejudice as RAP 20(B) does not provide for interlocutory relief from an order maintaining an injunction.

ATTORNEY DISCIPLINE:

IN RE: GLENN MARTIN HAMMOND

2024-SC-0331-KB **October 24, 2024**

Opinion and Order. All sitting. All concur.

The Kentucky Bar Association Board of Governors found attorney Glenn Martin Hammond guilty of three ethical violations and recommended he receive a public reprimand, attend ethics school regarding supervision of employees and keeping clients informed, and bear the costs of the KBA proceedings against him. Neither the KBA nor Hammond requested further review and the Kentucky Supreme Court adopted the decision of the Board pursuant to SCR 3.378(10).

Specifically, Hammond was found guilty of violating: (1) SCR 3.130(1.5)(b) and/or (c) regarding his failure to communicate his fee agreement to a client,; (2) SCR 3.130(5.3) by failing to properly instruct or supervise his unlicensed law clerk; and (3) SCR 3.130(1.4) by failing to communicate and adequately respond to a client's reasonable requests for information. After considering Hammond's disciplinary history, which included a private reprimand for similar misconduct, the Supreme Court approved Hammond's sanction.

IN RE: BRIAN ALLEN LOGAN

2024-SC-0471-KB **October 24, 2024**

Opinion and Order. All sitting. All concur.
Brian Allen Logan moved the Supreme Court to resign under terms of permanent disbarment pursuant to SCR 3.480(3). The Kentucky Bar Association Inquiry Commission had filed a motion for Logan's temporary suspension pursuant to SCR 3.165(1)(a) and (b) related to Logan's handling of an estate in which he admittedly misappropriated more than $400,000 over the course of five years. In his capacity as executor, Logan failed to file an estate inventory, periodic settlements, or tax returns, resulting in a loss to the estate of an additional $30,000. The Supreme Court had temporarily suspended Logan from the practice of law for related acts of misconduct. In consideration of the Inquiry Commission's investigation, Logan moved to resign under terms of permanent disbarment. He admitted his unethical conduct constituted violations of numerous rules of professional conduct. The Supreme Court granted Logan's motion to resign under terms of permanent disbarment.