

# **Kentucky Court Of Appeals**

## **Cases of Note**

### **[November-December, 2015](#)**

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1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

#### **IMMUNITY**

##### **Parking Authority of River City, Inc. v. Bridgefield Casualty Insurance Company** **[2014-CA-001610](#) 11/06/2015 2015 WL 6761026**

Opinion by Judge Dixon; Judges D. Lambert and Thompson concurred. The Court of Appeals affirmed an order of the Jefferson Circuit Court denying PARC’s motion to dismiss and finding that it was not entitled to immunity in a personal injury lawsuit brought by an individual injured while on PARC’s premises. The Court analogized the facts to those presented in Transit Authority of River City v. Bibelhauser, 432 S.W.3d 171 (Ky. App. 2013), wherein another panel addressed the issue of whether TARC was entitled to immunity from an underlying negligence action filed by an individual injured when he was struck by a TARC bus. The Court compared the statutes governing PARC - KRS 67A.914 and KRS 67A.920 - with those governing TARC - KRS 67C.101(2)(e) and KRS 96A.020 - and concluded that the legislative language and intent is the same in both. The Court held that like TARC, PARC’s authority and actions are more corporate than governmental; thus, it is not entitled to sovereign immunity. Further, although PARC met its burden of showing that it qualifies as a government entity as it is an agency of Louisville Metro (which is immune from suit), it cannot demonstrate that it fulfills a function integral to state government. Thus, it also does not meet the second prong of the test set forth in Comair, Inc. v. Lexington-Fayette Urban County Airport Corp., 295 S.W.3d 91 (Ky. 2009), and is not immune from liability.

#### **NEGLIGENCE**

##### **Pauly v. Chang** **[2014-CA-000404](#) 12/11/2015 2015 WL 8488910 DR Pending**

Opinion by Judge Dixon; Judges Clayton and Combs concurred. On appeal and cross-appeal from a judgment entered in accordance with a unanimous jury verdict in favor of appellees/cross-appellants Phillip K. Chang, M.D. and Timothy W. Mullett, M.D. in a medical malpractice and wrongful death action, the Court of Appeals affirmed. The Court first held that appellees University of Kentucky Medical Center and University Hospital of the Albert B. Chandler Medical Center, Inc. (collectively “UKMC”), who were dismissed prior to trial on grounds of governmental and qualified official immunity, were properly dismissed from the case pursuant to Withers v. University of Kentucky, 939 S.W.2d 340 (Ky. 1997), and its progeny. The Court also held that three UKMC employees were properly dismissed from the case on qualified immunity grounds. The Court next held that the circuit court did not err in excluding evidence pertaining to UK’s Interdepartmental Trauma Quality Conference Assurance Review and its resulting written analysis of the decedent’s treatment at UKMC. Testimony reflected that the purpose of the Trauma Conference was to conduct a “highly critical” examination that exceeded any standard of care analysis. The doctor describing the conference explained that the conference was designed to address system improvement and did not evaluate any individual doctor’s compliance with the

requisite standard of care. Appellants/cross-appellees' own surgery expert agreed with this characterization of the conference during his testimony. The Court further noted that even if it were to agree that the Trauma Conference concluded that a deviation from the standard of care had occurred, there was insufficient information to know whether the deviation applied to Drs. Chang or Mullett. Moreover, even assuming that evidence pertaining to the Trauma Conference was relevant, any probative value was outweighed by the danger of unfair prejudice and confusion of the jury. The Trauma Conference minutes did not contain any information that was directly relevant to the specific issue of whether Dr. Chang or Dr. Mullett deviated from the standard of care in their diagnosis and treatment of the decedent and, thus, the minutes would have served no other purpose than to confuse the jury. The Court also concluded that the Trauma Conference minutes did not constitute proper impeachment evidence. Next, the Court held that the circuit court did not err in limiting evidence relating to another patient who arrived at the UKMC emergency department shortly after the decedent's death with substantially the same injuries yet survived. As to the cross-appeal, the Court rejected the argument that appellees/cross-appellants should have been allowed to introduce evidence as to the decedent's fault in causing the fall that necessitated his medical treatment. The Court agreed with those jurisdictions holding that a plaintiff's negligence that merely provides the occasion for the medical care, attention, and treatment that subsequently results in a medical malpractice action should not be considered by a jury assessing fault. The fact that a patient has injured himself, negligently or non-negligently, has no bearing on the duty of the hospital and health care providers to treat him in accordance with the appropriate standard of care.

## **WORKERS' COMPENSATION**

### **Diop v. Zenith Logistics**

**[2015-CA-000822](#) 12/23/2015 2015 WL 9434538**

Opinion by Judge J. Lambert; Judges Combs and VanMeter concurred. Appellant challenged an opinion of the Workers' Compensation Board reversing an ALJ award based on a lack of medical evidence of causation. The Court of Appeals reversed, holding that the Board misconstrued controlling case law and that there was substantial evidence to support the ALJ's conclusion that appellant's injury arose in the course and scope of her employment. The ALJ did not abuse his discretion in relying on appellant's testimony in conjunction with the providers' medical records filed in the case.