Kentucky Supreme Court
Cases of Note
March-April, 2017

Note: To open hyperlink, take one of the following steps:
1. Hold down the control ("Ctrl") key and click on the link.
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Note: No Court in January

PREMISES LIABILITY

Teresa Grubb, et al. v. Roxanne Smith, et al.
2014-SC-000641-DG March 23, 2017
Opinion of the Court by Justice Hughes. Part I: Minton, C.J.; Keller, Venters, and Wright, JJ., concur. Cunningham, J., dissents for the reasons stated in his concurring in part, dissenting in part opinion. Part II: Minton, C.J.; and Cunningham, J., join Part II of the opinion. Keller, Venters, and Wright, JJ., do not join for the reasons stated in Venters, J., separate opinion. Part III: Minton, C.J.; Cunningham, Keller, Venters, and Wright, JJ., concur. Part IV: Minton, C.J.; Cunningham, Keller, and Venters, J., concur. Wright, J., dissents for the reasons stated in his concurring in part, dissenting in part opinion. VanMeter, J., not sitting. Following a bench trial, the trial court awarded damages to the plaintiff, a customer at a convenience store/filling station, for injuries she sustained when she tripped in a pot hole in the store's parking area and fell. The trial court ruled that the store's owner and its manager were jointly and severally liable, but it did not address the plaintiff's comparative fault. Reversing, the Court of Appeals held that the open-and-obvious doctrine provided the premise owner with a complete defense and that the store manager had no liability. Reversing the Court of Appeals' decision and remanding to the trial court, the Supreme Court applied recent precedent under which the open-and-obvious doctrine has been deemed a partial, no longer a complete, defense. In light of that precedent, the Court held that the trial court did not err in finding the premise owner liable, but it did err, so as to necessitate a remand, by failing to consider the plaintiff's comparative fault. The six-member Court divided evenly over whether, in the circumstances presented, the store manager could be deemed liable. The Court also rejected a claim that the trial judge ought to have recused.

WORKERS COMPENSATION

Ray Ballou v. Enterprise Mining Co., LLC, et al.
2016-SC-000039-WC March 23, 2017
Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, VanMeter, and Venters, JJ., concur. Wright, J., dissents without opinion. An ALJ found that Ballou suffered from category 1/1 coal workers' pneumoconiosis (CWP) and awarded Ballou retraining incentive benefits (RIB) under KRS 342.732(1). In order to receive RIB, an employee must stop working in the coal mining industry and enroll in a bona fide training program. Pursuant to KRS 342.732(1)(a)7 an employee who is 57 or older may leave the coal mining industry and opt to receive compensation based on a 25% disability rating without enrolling in a training program. Those benefits will be paid for a period of 425 weeks or until the employee reaches the age of 65, whichever first occurs. Ballou, who was 69 when last exposed to the hazards of CWP, could not avail himself of that option. However, he was not foreclosed from

receiving RIB if he enrolled in a bona fide training program because the only statutory age limitation 6 is on the 25% option. Ballou challenged the constitutionality of that age limitation. The Court held that the age limitation is constitutional. In doing so, the Court noted that, contrary to Ballou's argument, the statute did not completely foreclose receipt of compensation based on age. In fact, there is no statutory age limitation on RIB. The only age-related foreclosure is the option to receive compensation without participating in a retraining program. Thus, the statute treats Ballou the same as every other medically eligible coalminer younger than 57 and older than 65. The Court then determined that this disparate treatment did not violate the equal protection provisions of the U.S. and Kentucky Constitutions. The purpose of RIB is to encourage coalminers with early stage CWP to leave the coal mining industry before the disease results in significant impairment. Those coalminers who are approaching retirement age will be less inclined to change careers late in life and may forego RIB for that reason. However, offering compensation without requiring participation in retraining may encourage coalminers in that age group to leave the coal mining industry. Thus, the age restriction is rationally related to the purpose of RIB. Finally, the Court noted that the provisions of KRS 342.732(1)(a)7 are so intertwined that the statutory section had to stand or fall in its entirety. The Court could not simply change the age restrictions, and if the Court struck KRS 342.732(1)(a)7, Ballou would be in the same position. He would have to enroll in a bona fide retraining program in order to receive compensation.

Margie Mullins v. Leggett & Platt, et al.
2016-SC-000383-WC March 23, 2017
Opinion of the Court by Chief Justice Minton. All sitting; all concur. After reaching a settlement agreement with her employer, Mullins elected to pay her attorney fees in the form of a lump-sum payment collected from her weekly benefits. She soon discovered that her benefits were additionally discounted to reflect the present-value of future payments. She argued that statute did not allow the use of this multiplier, that her employer could not make this calculation on its own, and that this process was beyond the scope of her settlement agreement. The Court unanimously ruled in favor of the employer. Specifically, the word "commute" in the context of attorney fees directly contemplates discounting her weekly disability benefits to account for the present value of future payments. The statute recognizes the financial principle that a dollar paid today is worth more than a dollar paid tomorrow and that, in actuality, refusing to apply this multiplier would allow Mullins to recover more than she actually negotiated to receive.

Marshall Parker v. Webster County Coal, LLC (Dotiki Mine), et al. AND
Webster County Coal, LLC (Dotiki Mine) v. Marshall Parker, et al.
2014-SC-000526-WC 2014-SC-000536-WC April 27, 2017
Opinion of the Court by Justice Keller. All sitting. Cunningham, Keller, Venters, and Wright, JJ., concur. Minton, C.J., concurs in part and dissents in part by separate opinion, in which Hughes and VanMeter, JJ., join. Parker had worked in the coal mining industry for more than 30 years. At the age of 68, Parker injured his knee and low back. The ALJ awarded Parker permanent partial disability benefits based on a 26% permanent impairment rating. However, because Parker was older than his normal social security retirement age, the ALJ limited Parkers' 5 combined permanent partial disability and temporary total disability benefits to two years pursuant to KRS 342.730(4). On appeal, Parker challenged the constitutionality of KRS 342.730(4). The majority of the Court determined that KRS 342.730(4) violates the Equal Protection Clause because it treats one group of older workers, those who qualify for social security retirement benefits, differently from another group of older workers, teachers. As the Court noted, the statute "invidiously discriminates against those who qualify for one type of retirement benefit (social security) from those who do not qualify for that type of retirement

benefit but qualify for another type of retirement benefit (teacher retirement).” As noted by the Court, teachers, who never qualify for social security retirement benefits can collect their teacher retirement and their full workers’ compensation benefits while other workers can only collect a portion of their workers’ compensation benefits. The Court could find no rational basis for treating all other workers in the Commonwealth differently from teachers. The dissent saw no reason to alter past decisions that had found no equal protection violation.