

**Kentucky Supreme Court**  
**Cases of Note**  
**[November-December, 2017](#)**

Note: To open hyperlink, take one of the following steps:

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

**NEGLIGENCE**

**John Adams, M.D., et al. v. Mark Sietsema**

**[2015-SC-000483-DG](#) November 2, 2017**

Opinion of the Court by Justice Venters. Minton, C.J.; Cunningham, Hughes, Keller, and VanMeter, JJ., concur. Wright, J., concurs in part and dissents in part by separate opinion. Civil Appeal; Standard of review of summary judgement. A county jail inmate brought medical negligence action against the doctor and practitioner serving as the primary health care providers for the jail after nursing staff at the jail failed to notify doctor of the inmate’s continued pain and refusal to take prescribed 4 medication. Inmate alleged the doctor failed to adequately train staff on the use of his signature and on when to contact the doctor. Trial court granted summary judgment for the defendants when inmate failed to identify expert critical of doctor’s training of nurses. Questions presented: (1) What is the standard of review for summary judgment based on lack of expert testimony? (2) Was summary judgment proper? Held: (1) The need for expert testimony is a sufficiency of proof matter. Whether evidence is sufficient to sustain a particular claim is a question of law, so summary judgment based on a failure of proof is reviewed de novo. (2) Here, expert testimony was required because the negligence alleged by inmate was neither admitted by defendants nor was it self-evident for application of res ipsa loquitur.

**TORTS**

**Angela Ford, et al. v. Harold Baerg, Jr., et al.**

**[2016-SC-000136-DG](#) November 2, 2017**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. In a 7-0 decision, the Court affirmed the Court of Appeals, holding that the appellant’s conversion claim against two different parties failed as a matter of law. To assert a successful claim of conversion, the plaintiff must satisfy seven elements. In this case, the plaintiff failed to satisfy the first two elements—(1) having legal title to the alleged converted property and (2) the right to the possess the property. The appellant granted the “thief” in this case signatory rights on her bank accounts. By virtue of this signatory status, the “thief” possessed apparent authority to transfer the appellant’s funds to innocent third parties using a wire transfer and a negotiated check. Regarding the wire transfer, as a matter of law, title to funds passes to the beneficiary bank upon acceptance of a payment order, as long as the beneficiary bank has no reason to know that the alleged converted property has been obtained through commission of a theft offense. In this case, the bank had no reason to know of the 7 thief’s actions, whereby title and the right to possess the property transferred, causing the appellant’s conversion claim to fail. Regarding the negotiated check, as a matter of law, once a payee receives the funds from a negotiated check, the drawer loses title and the right to possess those funds, and the appellant’s conversion claim fails.

**Lake Cumberland Regional Hospital, LLC v. Helan Adams**

**[2016-SC-000181-DG](#)**

**AND**

**Spring View Hospital, LLC v. Karen Jones (Now Epley)**

**[2016-SC-000189-DG](#)**

**AND**

**Spring View Hospital, LLC v. Joyce Spalding, Etc., et al.**

**[2016-SC-000259-DG](#)**

**AND**

**Joyce Spalding, Etc. et al. v. Spring View Hospital, LLC**

**[2016-SC-000277-DG](#) November 2, 2017**

Opinion of the Court by Justice Keller. Minton, C.J.; Cunningham, Hughes, Keller, VanMeter, and Wright, JJ., concur. These consolidated cases asked the Court to recognize negligent credentialing as a new tort in the Commonwealth. Plaintiffs brought medical negligence claims against their respective doctors and the hospitals in which the doctors were granted privileges. The trial courts dismissed plaintiffs' claims against the hospitals finding that negligent credentialing was not a recognized cause of action in this State. The Court of Appeals reversed, holding that such a claim did exist. The Court declined to recognize a stand-alone cause of action of negligent credentialing. However, the law of the Commonwealth has long supported a plaintiff's claim of negligence against a hospital for the staffing of its physicians. Plaintiffs have an avenue of recovery through common law negligence.

**Richard Storm v. Louis Martin**

**[2016-SC-000457-DG](#) December 14, 2017**

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Hughes, VanMeter, Wright, JJ, concur. Venters, J., dissents by separate opinion in which Cunningham and Keller, JJ, concur. Martin was injured by a downed tree while riding his motorcycle shortly after a significant windstorm. Martin filed an action alleging negligence due to the failure to remove the tree or warn as to the hazard against Storm, the Metro Louisville County Engineer and Assistant Director of Public Works, as well as Pullen, the Director of Public Works, in their individual and official capacities, as well as Louisville Gas and Electric Company. Following discovery, the trial court held that Pullen was entitled to qualified immunity in his official capacity and dismissed the claims against him, but declined to extend this immunity to Storm, the interlocutory appeal of which was denied by the Court of Appeals. At trial, the jury returned a unanimous verdict for Storm, finding that Martin had not proven by a preponderance of the evidence that Storm failed to comply with his duty as set forth in the instruction and pursuant to KRS 179.070(1)(j). The trial court denied Martin's subsequent motion for JNOV/new trial without written findings or a hearing. On appeal, the Court of Appeals reversed and remanded for a new trial, holding that Martin was not entitled to a directed verdict, but was entitled to a new trial since the jury's findings that Storm did not fail to comply with his statutory duty was against the weight of the evidence, and in so finding that he did not exercise ordinary care, overlooked his specific statutory duty. On appeal, Martin did not allege erroneous jury instructions, however, the Court of Appeals opined that the jury instructions contributed to the jury's erroneous verdict. This Court affirmed the Court of Appeals' denial of a directed verdict but reversed the grant of a new trial. This Court held that the jury instructions did contain the requisite specific duty language required of a statutory duty, and that Martin cannot now object to jury instructions for the first time on appeal, especially when the given instructions were nearly identical to those he proposed. This Court also held that since Storm's duty was ministerial, not absolute, the duty was thus an issue for the jury to determine.

## WORKERS COMPENSATION

### **Toyota Motor Manufacturing, Inc. v. Kathy Prichard, Etc., et al.**

**[2017-SC-000031-WC](#) November 2, 2017**

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, and Wright, JJ., sitting. All concur. VanMeter, J., not sitting. Worker's Compensation; timeliness of reopening. In 2007, Prichard received an award of permanent partial disability benefits based upon a permanent impairment rating of eight percent. In 2009, the case was reopened and a modification of the original award was issued in 2011. In August 2014, Prichard moved to reopen the 2011 award and as a result, received an award for total disability. Issues presented: (1) was Prichard's 2014 motion to reopen barred by the four-year limitation period contained in KRS 342.125(3); and (2) did Prichard demonstrate through objective medical evidence a change in her disability indicating a worsening of her impairment as required for reopening a claim under KRS 342.125(1)(d). Upon review, the 8 Supreme Court held: (1) pursuant to *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775 (Ky. 2008), the four-year limitation period for reopening a claim commences at the date of the most recent order granting or denying workers' compensation benefits, rather than from the date of the original award. Prichard's 2014 motion to reopen was timely because it was within four years of the 2011 award. Also, the updated medical conclusions of Prichard's two treating physicians supported the ALJ's conclusion that Prichard's condition had worsened from partial disability to total disability between the dates of the original award and the first reopening, and from then until the filing of the second reopening.