

Kentucky Court Of Appeals
Cases of Note
[November-December, 2019](#)

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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”.

TORTS

Damron v. Garrett

[2018-CA-000825](#) 09/20/2019 2019 WL 4565239

Opinion by Judge Nickell; Judges Kramer and L. Thompson concurred. Appellant claimed she was seriously injured when the vehicle she was driving left Ligon Camp Road in Floyd County and landed upside down in a creek. Alleging negligent road upkeep and violation of Kentucky’s Open Records Act, she sued Floyd County, its County Judge Executive Ben Hale, and county road foreman Gary Garrett. All defendants jointly moved for dismissal on grounds of sovereign immunity, official immunity, and qualified official immunity. This request was ultimately granted and appellant appealed, challenging the grant of qualified official immunity to Garrett and the award of summary judgment to all appellees, and alleging that road maintenance is a ministerial act; Floyd County has no road maintenance plan; and a jury must decide whether the open records request was received. The Court of Appeals affirmed. The Court held that appellant presented no evidence of any negligence or wrongdoing by the county or anyone affiliated with the county. As to appellant’s argument that immunity was wrongly applied to Garrett because road maintenance, under KRS 179.070, is a ministerial function, not a discretionary one, the Court first noted that Garrett did not qualify as a county road engineer or supervisor under KRS Chapter 179. Consequently, Garrett - as county road foreman - was not statutorily responsible for maintaining all Floyd County roads and bridges under KRS 179.070. Because he responded to complaints at the direction of County Judge Executive Hale, his work was wholly ministerial and his actions were not covered by immunity. The Court further held, however, that while appellant’s claims should not have been dismissed against Garrett on grounds of immunity, the error was harmless as appellant could not prevail. She offered no proof of a defective roadway, a negligent act, or receipt of a complaint being ignored, and no proof Garrett was a county road engineer or supervisor subject to KRS 179.070. The Court also rejected appellant’s open records claim, holding that she had failed to establish that Floyd County and Hale received her requests and willfully withheld the desired information.

Critser v. Critser

[2018-CA-001668](#) 11/15/2019 2019 WL 6041107

Opinion by Judge Jones; Judges Combs and L. Thompson concurred. Appellant Michael Critser was injured when a vehicle driven by his wife Judy hit a patch of ice, skidded, and stopped suddenly, causing a collision with another vehicle. Michael filed a negligence action against Judy in circuit court. The circuit court granted summary judgment in favor of Judy, finding it undisputed that she was obeying all traffic laws at the time of the accident and that the icy patch was a sudden emergency that she could not have avoided. In affirming, the Court of Appeals discussed the history of the sudden emergency doctrine in Kentucky, and its viability notwithstanding Kentucky’s adoption of comparative negligence. The sudden emergency doctrine absolves one acting in the face of an emergency from liability, even where the actions may have been unwise. The doctrine does not apply in situations where the driver operates a

vehicle in a negligent manner making it more likely that the car would slip. In this case, both parties testified that Judy was driving slowly, cautiously, and attentively. Since Michael failed to offer any evidence that Judy was driving negligently when she hit the patch of ice and spun out of control, summary judgment in her favor was appropriate.

NEGLIGENCE

Coppage Construction Company, Inc. v. Sanitation District No. 1

[2018-CA-000419](#) 12/13/2019 2019 WL 6795706

Opinion by Judge Spalding; Judges Combs and K. Thompson concurred. The Court of Appeals affirmed in part and reversed in part the circuit court's grant of summary judgment in favor of Sanitation District No. 1. against the claims of Coppage Construction Company, Inc. The construction company was a subcontractor on a project of sewer improvement for Sanitation District No. 1. The Court held that the negligence per se doctrine, as codified by KRS 446.070, did not provide a private right of action to Coppage for alleged violations of KRS 220.290, which requires the posting of performance bonds on sanitation projects, or KRS 220.135(7)(a), which provides that a sanitation district is responsible for the construction and improvement of sewer and drainage facilities which it owns. The Court further held that summary judgment was appropriate on Coppage's claims that the Sanitation District could be responsible for damages to it for negligence in hiring the general contractor, that it failed to properly supervise or manage the general contractor, and that the general contractor was merely an agent of the Sanitation District. The Court did reverse and remand the circuit court's grant of summary judgment pursuant to KRS 362.225, partnership by estoppel, because Coppage's allegations that the Sanitation District made representations that it was partnering with the general contractor created a material issue of fact as to whether Coppage relied upon same to its loss. The Court held that Coppage made a cognizable claim as a matter of law and summary judgment was therefore improper on that issue.

WORKERS COMPENSATION

Crittenden County Fiscal Court v. Hodge

[2018-CA-000815](#) 11/22/2019 2019 WL 6222915

Opinion by Judge K. Thompson; Judges Combs and Lambert concurred. The Court of Appeals reversed and remanded an award of permanent disability benefits for an unlimited duration pursuant to *Holcim v. Swinford*, 581 S.W.3d 37 (Ky. 2019). That decision holds that the time limits set out in the 2018 amendments to KRS 342.730(4), which limit the duration of benefits to workers who were injured after they reached the age of seventy years or older to four years, are to be applied retroactively. Thus, the new version of KRS 342.730(4) limited appellee's benefits after he was injured to four years of duration because he was over seventy years of age at the time of the disabling accident. Consequently, it was error for his award of benefits to be of unlimited duration.