

Kentucky Supreme Court
Cases of Note
May-June, 2019

Note: No Court in May

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”.

TORTS

Kathy Miller, as Next Friend of her Minor Child, E.M. v. House of Boom Kentucky, LLC

2018-SC-000625-CL June 13, 2019

Opinion of the Court by Justice VanMeter. All sitting; all concur. Kathy Miller sued House of Boom for alleged negligence after her daughter was injured at the trampoline park House of Boom operates. Beforehand, when purchasing tickets online, Miller checked that contained a waiver of liability that would release any claims against House of Boom by Miller or her child. House of Boom filed a motion to dismiss the lawsuit based on the language of the waiver. The Western District of Kentucky asked for certification by the Kentucky Supreme Court to determine whether “a pre-injury liability waiver signed by a parent on behalf of a minor child [is] enforceable under Kentucky law.” The Court granted certification and held that “[t]he general common law rule in Kentucky is that ‘parents ha[ve] no right to compromise or settle’ their child’s cause of action as that ‘right exist[s] in the child alone,’ and parents have no right to enter into contracts on behalf of their children absent special circumstances.” The Court further held that “no relevant public policy [exists] to justify abrogating the common law to enforce an exculpatory agreement between a for-profit entity and a parent on behalf of her minor child.”

Luis J. Gonzalez, II, etc. v. Jeremy Johnson, in his Official Capacity as Scott County Deputy Sheriff, et al.

2018-SC-000224-DG June 13, 2019

Opinion of the Court by Justice Lambert. All sitting. Minton, C.J; Buckingham, Hughes, Keller, Lambert, and Wright, JJ., concur. VanMeter, J., dissents by separate opinion. A wrongful death case wherein the Court addressed the sole issue of whether to overrule Chambers v. Ideal Pure Milk Co., 245 S.W.2d 589 (Ky. 1952). The Court abandoned Chamber’s holding that a pursuing police officer cannot legally be the proximate or legal cause of damage inflicted on a third party by a fleeing suspect, also known as the per se no proximate cause rule. Overruling Chambers, it held that a jury may determine whether a pursuing officer’s actions were a substantial factor in causing injury to a third party under existing negligence law and then apportion fault accordingly.

WORKERS COMPENSATION

Letcher County Board of Education v. Roger Hall, et al.

2018-SC-000638-WC June 13, 2019

Opinion of the Court by Justice Keller. All sitting; all concur. Roger Hall developed mesothelioma after being exposed to asbestos over the course of his employment as a teacher at Letcher County High School in Letcher County, Kentucky. In 2015, Hall filed a claim for

workers' compensation benefits. This claim was denied as untimely by the administrative law judge, but this decision was reversed by the Workers' Compensation Board. The Court of Appeals affirmed the Board. The question before the Court was whether the statute of limitations barred Hall's claim. The Supreme Court found that the administrative law judge's dismissal of Hall's claim was clearly erroneous. There was clear evidence that asbestos containing material was present in the school at the time Hall retired in 2003. Therefore, his claim was made within twenty years from his last date of exposure and the Court of Appeals' decision was affirmed.

TECO/Perry County Coal v. Paul Feltener, et al.

AND

McCoy-Elkhorn Coal Co., Inc. v. Robbie Hatfield, et al.

AND

Enterprise Mining Company v. Herman Napier et al.

[2018-SC-000215-WC](#) June 13, 2019

[2018-SC-000216-WC](#) June 13, 2019

[2018-SC-000217-WC](#) June 13, 2019

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Buckingham, Hughes, and VanMeter, JJ., concur. Lambert, J., dissents by separate opinion in which Keller and Wright, JJ., join. Appellees Herman Napier, Robbie Hatfield, and Paul Feltner all filed claims against their employers (collectively "Appellants") for workers' compensation benefits based on occupational hearing loss. The relevant statute, KRS 342.7305(2), allows for income benefits from hearing loss only where an 8% whole body impairment exists. All three Appellees fell below the 8% threshold and challenged the statute as a violation of equal protection. The Court of Appeals held that the statute violated equal protection on grounds that no rational basis existed for the 8% threshold. The Kentucky Supreme Court held that while KRS 342.0011(1) excludes "the effects of the natural aging process," and KRS 342.730(l)(b)-(c) limit the impairment rating to one "caused by the injury or occupational disease," KRS 342.7305(1) sets an 8% threshold. The Guides instruct the physician to not subtract for age-related hearing loss when assigning a rating. Without the use of a threshold number, the Guides contain no reference as to how KRS 342.0011(1) or KRS 342.730(l)(b)-(c) would exclude pre-existing and age-related hearing loss. The Court further ruled that the "logical conclusion [to the statutory construction] is that the 8% threshold recognizes the differences in assigning an impairment rating to hearing-loss claimants under the Guides, as compared to assigning a rating to other traumatic injuries." Accordingly, the Court reversed the Court of Appeals and held that a rational basis existed for the 8% threshold for income benefits contained in KRS 342.7305(2).