Kentucky Court Of Appeals
Cases of Note
March-April, 2020

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1. Hold down the control ("Ctrl") key and click on the link.
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INSURANCE

McAlpin v. American General Life Insurance Company
2019-CA-000053 04/03/2020 2020 WL 1646824
Opinion by Judge Kramer; Judges Combs and K. Thompson concurred. Appellant challenged the summary dismissal of various tort claims he had asserted, all of which were rooted in his view that one of the appellees in this matter, his insurance agent, had breached a professional obligation owed to him when, on February 14, 2008, the agent offered to sell him the life insurance he requested but did not offer to sell him accidental death insurance. Upon review, the Court of Appeals explained that under given circumstances, an insurance agent may expressly or implicitly assume a "duty to advise" an individual regarding insurance matters, but that the scope of such an assumed duty is an essential consideration for purposes of tort liability. Affirming the circuit court's summary dismissal, the Court explained that if the insurance agent owed appellant any duty to advise regarding insurance matters, nothing of record supported that such a duty was ever breached. For example, appellant faulted the appellees for failing to offer him a $1 million accidental death policy but, at all relevant times, the appellees undisputedly did not sell $1 million accidental death policies to anyone, nor had appellant requested accidental death insurance. Appellant also faulted the insurance agent for not mentioning "the possibility of accidental death coverage." However, the accidental death coverage the agent could have offered would not have presented a solution to the needs or problems appellant had brought forward. Undisputedly, the accidental death insurance the agent could have offered at the time would have assumed fewer risks and provided at most only half the coverage amount of the life insurance appellant sought.

NEGLIGENCE

Holder v. Paragon Homes, Inc.
2019-CA-000908 04/03/2020 2020 WL 1646818
Opinion by Judge Lambert; Special Judge Buckingham and Judge Combs concurred. On direct appeal, the Court of Appeals affirmed the circuit court's decision to grant summary judgment in favor of appellee, a general contractor. Appellant, an independent contractor, argued two theories of negligence, negligence per se for violation of KRS 338.031(1) and premises liability, after falling at a job site and injuring his arm. Ultimately, the circuit court determined appellee did not owe a duty to appellant under either theory. The Court of Appeals agreed, holding that because appellant was an independent contractor whose services were not retained by appellee, he lacked the relationship necessary under KRS 338.031(1) to impose a duty of care under a negligence per se theory. Further, appellant's status as an independent contractor again prevented recovery under a premises liability theory because the defect which caused his injury was apparent, and he should have recognized the danger or risk of harm.

PUBLIC OFFICIALS

Louisville/Jefferson County Metro Government v. Ackerson
2018-CA-001067 04/24/2020 2020 WL 1966538
Opinion by Judge Maze; Judges Caldwell and Dixon concurred. Appellees Brent Ackerson and David Yates are sitting Metro Council members who also engage in the private practice of law. Two Metro employees retained Ackerson and Yates to represent them in their civil claims against third-party defendants following a work-related automobile accident. Metro had previously paid workers' compensation benefits to the employees. While the third-party defendants were insolvent, the defendant's insurer offered to pay the proceeds of a $1,000,000 liability policy into court in exchange for a release of their clients. On behalf of their clients, Ackerson and Yates agreed and the money was paid into court. Metro intervened in the action, asserting that it was entitled to subrogation of its workers' compensation interests. Metro also argued that Ackerson and Yates should be disqualified due to their conflicts of interest as Council members. However, Metro continued to negotiate with Ackerson and Yates, obtaining a full settlement of several unrelated claims. Furthermore, Metro stipulated that its subrogation claim and any conflicts of interest were contingent upon the value of the employees' pain and suffering claims. That matter was submitted to an arbitrator, who found that the employees' pain and suffering claims exceeded the amount of the settlement. Upon return to circuit court, Metro again moved to disqualify Ackerson and Yates, arguing that they were disqualified under KRS 61.220 and for their conflicts of interest under the Rules of Professional Conduct. As a result, Metro argued that Ackerson and Yates must forfeit any attorney fees or liens in the settlement proceeds. The circuit court disagreed, finding that KRS 61.220 did not apply and that Metro had waived any conflicts of interest. On appeal, the Court of Appeals first held that an attorney's representation of a client is not an "interest[] in a claim against a county" within the meaning of KRS 61.220(1). Consequently, the contracts of representation were not void under the statute. Rather, the Court held that any conflict of interest must be evaluated under the standards for disqualification set forth in SCR 3.130 (Rule 1.7(a)). While the Court agreed that Metro had a potential subrogation interest, disqualification requires proof of an actual conflict, not merely a potential one. In the current case, the Court expressed doubt whether Metro would have been able to assert a subrogation claim against the settlement proceeds. The Court further noted that Metro might have been able to obtain an independent apportionment of damages, thus triggering an active conflict of interest. However, the Court agreed with the circuit court that Metro waived this right by negotiating with Ackerson and Yates and by agreeing to submit the matter to arbitration without its participation. The Court concluded that Ackerson and A. 2018-CA-001067 04/24/2020 2020 WL 1966538 Yates were entitled to rely on Metro's oral and written representations, which effectively waived its subrogation rights and, by extension, any conflict of interest. Consequently, the Court held that the circuit court properly denied Metro's motion to disqualify Ackerson and Yates as counsel, and they remain entitled to assert their liens against the proceeds.

WORKERS COMPENSATION

JSE, Inc. v. Ahart
2018-CA-000069 03/13/2020 2020 WL 1223412
Opinion by Judge K. Thompson; Judges Acree and Jones concurred.
JSE, Inc. d/b/a Perma Staff II (Perma Staff) and its insurer, Kentucky Employers' Mutual Insurance (KEMI), filed petitions for review from an opinion and order of the Workers' Compensation Board affirming an order of the Administrative Law Judge (ALJ). The ALJ found that Patricia Ahart was an employee of Perma Staff and Whaler's Catch Restaurants of Paducah,

LTD (Whaler's) at the time she sustained a work-related injury; KEMI was the at-risk insurer at the time of Ahart's injury; and Ahart's claim against Perma Staff was not barred by the statute of limitations. The Court of Appeals affirmed, holding that the provisions of the contract between Perma Staff, an employee leasing company under KRS 342.615(1), and Whaler's expressly provided that employees assigned to Whaler's were employees of Perma Staff. The Court noted that the contract authorized any Whaler's on-site supervisor to hire individuals without further authorization from any Perma Staff owner or officer. The Court also held that KEMI was the at-risk insurer on the date of Ahart's injury. The policy issued to Perma Staff listed Whaler's in an endorsement as one of the covered workplaces. Finally, the Court held that the claim against Perma Staff was not barred by the statute of limitations. Ahart timely filed her Form 101, and under 803 KAR 25:010, Perma Staff could be joined as a party after the expiration of the statute of limitations.