

Kentucky Court Of Appeals
Cases of Note
[January-February, 2021](#)

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TORTS

LAWRENCE MILLER, JR. v. BRITTANY BUNCH, ADMINISTRATIX OF THE ESTATE OF AUTUMN RAINE BUNCH, ET AL.

[2019-CA-1856](#) 02/05/2021 2021 WL 402552

Opinion by CLAYTON, DENISE G.; GOODWINE, J. (CONCURS) AND KRAMER, J. (CONCURS) The Court held that Mandy Jo’s Law, Kentucky Revised Statutes (KRS) 411.137 and KRS 391.033, which precludes parents from recovery of damages for the wrongful death and loss of consortium of their deceased child upon a finding of abandonment, applies to a child who is a viable fetus. For purposes of Mandy Jo’s law, abandonment is defined as “neglect and refusal to perform natural and legal obligations to care and support, withholding of parental care, presence, opportunity to display voluntary affection and neglect to lend support and maintenance.” Kimbler v. Arms, 102 S.W.3d 517, 522 (Ky. App. 2003). Appellant is the biological father of a child who was stillborn. Appellant argued he was entitled to a share of the settlement proceeds for her wrongful death because he was unaware he was her biological father until DNA testing was performed after her death. The Court held that substantial evidence supported the trial court’s finding that Appellant was aware he was the child’s father because he ceased all contact with the child’s mother when she informed him she was pregnant, apart from giving the mother a \$25 money gram and going to the hospital and holding the child after she was born. Appellant further argued he was not given any opportunity to develop a relationship with the child as she died at birth and, consequently, he could not have abandoned her. The Court rejected this argument because if this were the case, all parents with a claim for the wrongful death of a viable fetus would be excused from the application of Mandy Jo’s law regardless of whether or not they fulfilled their parental obligations to support the child. The Court characterized the parental relationship as including the obligation to provide nurture, care, support, and maintenance prior to the child’s birth. Beyond giving the mother the money gram, Appellant provided no additional support, attended no medical appointments with the mother, and did not contribute to or attend the child’s funeral services. Because the trial court’s finding that Appellant had intentionally not fulfilled his parental obligations was supported by substantial evidence, the Court affirmed the trial court’s ruling that Appellant had abandoned the child and was precluded by Mandy Jo’s law from recovery of damages from the settlement proceeds for her wrongful death and loss of consortium.

SHIRLEY BELL v. NLB PROPERTIES, LLC; ET AL.

[2020-CA-0231](#) 02/05/2021 2021 WL 402553

Opinion by KRAMER, JOY A.; DIXON, J. (CONCURS) AND LAMBERT, J. (CONCURS) Shirley Bell alleged that the automatic wash bay in the car wash owned and operated by Appellees malfunctioned during her use, causing another vehicle to collide with her vehicle. Applying the business premises exception of Kentucky’s Motor Vehicle Reparations Act (“MVRA”), the Court of Appeals affirmed the circuit court’s dismissal of Bell’s action against

Appellees. Bell's cause of action was subject to a one-year statute of limitations as a personal injury, rather than the two-year statute of limitations provided under the MVRA.

ANNE LEONHARDT v. LAURA PREWITT

2019-CA-1215 02/05/2021 2021 WL 402545

Opinion by LAMBERT, JAMES H.; COMBS, J. (CONCURS) AND GOODWINE, J. (CONCURS) Anne Leonhardt appealed from an order of the Fayette Circuit Court dismissing her negligence and premises liability claims against Laura Prewitt in her individual capacity as Executive Director of the Kentucky Horse Park, which arose from Leonhardt's falling in the Park's stadium. Affirming, the Court of Appeals held the circuit court did not err in its determination that Prewitt could not be held individually liable for Leonhardt's injuries as Prewitt had not acted in bad faith or exceeded the scope of her authority. Accordingly, the circuit court properly held that the elements of qualified immunity were satisfied.

ANNE LEONHARDT v. JONATHAN LANG, ET AL.

2019-CA-1283 02/05/2021 2021 WL 402534

Opinion by MAZE, IRV; CALDWELL, J. (CONCURS) AND KRAMER, J. (CONCURS IN RESULT ONLY) In a companion case to Leonhardt v. Prewitt, 2019-CA-1215-MR, the Court of Appeals affirmed the decision of the Fayette Circuit Court that appellant Leonhardt's claims against two additional employees of the Kentucky Horse Park, whom she did not name in her previous circuit court action, were barred by the doctrine of res judicata. The Court concurred in the circuit court's assessment that the parties in the two actions were effectively identical; that the appellees in the second action filled the role of the "Unknown Defendant" in the first case; that the appellees' identity was known to Leonhardt in time to join them as party-defendants in the first action; and that the actions arose from the same factual situation and advanced identical claims. Citing *Yeoman v. Commonwealth, Health Policy Board*, 983 S.W.2d 459 (Ky. 1998), the Court concluded that because the two suits arose from the same controversy, the previous suit must be deemed to have adjudicated every matter which was or could have been brought in support of the cause of action. Thus, the Court held that even if it were to conclude that the appellees were not the Unknown Defendant, Leonhardt could and should have prosecuted any claims she might have against them in her initial action.

TRIAL VERDICTS

LAUREN SAVAGE, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF JAMES SAVAGE VS ALLSTATE INSURANCE COMPANY, ET AL.

2017-CA-0615 01/15/2021 2021 WL 137261

Opinion by MAZE, IRV; COMBS, J. (CONCURS) AND DIXON, J. (CONCURS) Allstate and Hartford each acquired salvage vehicles, a Toyota and a Jeep, respectively, from their insureds. Allstate and Hartford then contracted Co-part, a national auto and salvage dealer, to sell the vehicles. One of Co-part's "members," a Mexican auto dealer named Baraza, purchased the vehicles at online auction sales. Baraza dispatched an agent, Ramos, to pick up the vehicles in Maryland and Kentucky. Co-part released the Toyota to Ramos at its Maryland facility. Ramos drove the vehicle to Co-part's Kentucky facility, where Co-part released the Jeep to Ramos. Ramos attached temporary permits he had obtained from the State of Arizona to each vehicle and connected the Jeep to the Toyota by means of a tow bar. The vehicles were subsequently involved in the subject accident on I-65, in which James Savage was killed. The trial court dismissed the Estate's claims against Ramos, Allstate, Hartford, and Co-part and its executives. It also denied the Estate's motion to file an amended complaint naming Liberty Mutual, Co-part's insurance carrier. The trial court permitted the Estate's common law claims for negligent

entrustment to go forward against Co-part and its Louisville employees. The jury found that neither Co-part nor its employees was liable under these common law claims. The jury awarded a judgment against Chapa, the sole remaining defendant, for \$75,000 in compensatory damages and \$5 million in punitive damages. The jury also awarded \$500,000 for loss-of-consortium to Savage's widow, and the trial court entered a judgment on the jury verdict.

On appeal, the Court affirmed the judgment in part, reversed in part, and remanded the matter for a new trial, holding: first, the trial court properly quashed service on Ramos due to the Estate's failure to comply with the Hague Convention and the provisions of KRS 454.210(3)(c), which required an additional mailing from the Secretary of State to Ramos in Mexico. Second, the trial court did not err in dismissing the claims against Allstate and Hartford because their obligations to insure the vehicles ended upon transfer of the vehicle titles at delivery, and they could not be vicariously liable for Copart's negligence because Co-part was acting only as an independent contractor in selling the vehicles. Third, the claims against Co-part's executives were properly dismissed because they had no responsibilities for supervising or training Co-part employees. Fourth, the trial court did not abuse its discretion in denying the Estate's motions to file amended complaints as there was no evidence to support the assertion that Allstate, Hartford and Co-part were engaged in a joint venture. Fifth, the Estate could only assert the common law negligence claims based upon Co-part's conduct in Kentucky involving the Jeep and not upon the conduct in Maryland involving the Toyota.

Sixth, the trial court did not err in dismissing most of the statutory claims against Co-part because Co-part did not meet the definition of an "owner" or "operator" of the motor vehicles under certain statutes. However, the Court reversed the trial court's dismissal of the Estate's claim under KRS 186A.100 because the statutory term "purchaser for use" means a consumer, as opposed to a dealer-to-dealer transaction. As a result, Copart had a statutory duty to determine whether the Jeep was properly licensed prior to allowing Ramos to operate it on the highway. Similarly, the Court reversed the trial court's dismissal of the Estate's claim against Co-part under KRS 189.224 because the flat-tow combination employed by Ramos clearly amounted to operating both vehicles for purposes of the statute.

Seventh, the trial court abused its discretion by allowing Co-part to withdraw an earlier admission that Ramos "drove out" the Toyota from its Maryland facility; the Estate was unfairly prejudiced because Co-part waited to withdraw the admission until after discovery had ended. Eighth, the Court affirmed the trial court's order excluding evidence that Savage was drawing Social Security Disability benefits because as a general rule, the estate of a decedent who had no power to earn money at the time of his death cannot recover for lost disability benefits.

Ninth, the trial court did not abuse its discretion in excluding evidence regarding Liberty Mutual's role in Co-part's defense, Allstate's and Hartford's roles in the vehicle sales, and Co-part's statutory duties as a used-car dealer. Tenth, the trial court was not obligated to conduct a Daubert hearing prior to excluding portions of the testimonies offered by the Estate's expert witnesses because the experts were excluded on grounds other than qualifications. However, the trial court improperly excluded the testimony of one of the Estate's experts as to the duties owed by salvage and impound yards. Eleventh, Co-part's experts could properly offer opinions about the cause of the accident even though their opinions were based in part upon hearsay contained in police reports. But one of the experts should not have been allowed to offer an accident reconstruction opinion since he admitted that it was outside of the scope of the field for which he was qualified as an expert.

Twelfth, the trial court abused its discretion by allowing evidence that Savage was not wearing a helmet and had prescription medication in his system at the time of the accident. However, evidence of Savage's prior accidents, medical history, and drug use was relevant to the claim for loss of consortium provided that it was not used as improper character evidence. Thirteenth, the Estate was not entitled to a directed verdict against Co-part on the negligent entrustment claims because there were issues of fact concerning breach and causation. But the trial court properly granted a directed verdict on the punitive damages claims because the Estate failed to present any evidence showing fraud, oppression, malice or gross negligence by Co-part. Finally, the Court held that the Estate had not preserved its request to amend the judgment against Chapa.