

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

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INSURANCE

Brent Foreman, et al. v. Auto Club Property-Casualty Insurance Company [2018-SC-0618-DG](#) February 18, 2021

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Conley, Hughes, Keller, Nickell, and VanMeter, JJ., concur. Lambert, J., concurs in result only. Keller, J., concurs by separate opinion in which Conley and Nickell, JJ., join. Brent and Kathleen Foreman brought a declaratory judgment action in the circuit court against Auto Club Property-Casualty Insurance Company for payment under their homeowner’s insurance policy for property damage caused by a house fire started by their teenage son, in a suicide attempt. Auto Club denied liability based on the intentional-loss exclusion in the policy.

The circuit court granted summary judgment in the Foremans’ favor, finding the policy exclusion inapplicable because their son was unable to form the intent to cause a loss required for the exclusion to apply. The Court of Appeals reversed, holding that the trial court erred in ignoring unambiguous policy language that contained an objective component for judging the son’s expectation of property damage when he started the fire. The appellate court explained that when the son’s acts were viewed objectively, undisputed evidence triggered the exclusion.

The case was remanded and the Foremans had the burden of proof to overcome the exclusion with evidence that their son lacked mental capacity to understand the physical consequences of his act, regardless of whether he could discern right from wrong, and noting substantial evidence already of record that precluded summary judgment in favor of the Foremans under that objective standard.

The Supreme Court granted discretionary review and agreed with the Court of Appeals’ analysis that the trial court’s grant of summary judgment in favor of the Foremans was erroneous but held that, on remand, the Foremans may litigate a potential lack of capacity defense.

Note: IIK submitted an amicus brief authored by Tom Glassman in this case, and the decision is a victory for our position.

CIVIL PROCEDURE

Estate of John C. Benton, Jr. by Mary M. Marcum as Executrix v. Tim Thomas Currin, et al.

[2019-SC-0279-DG](#) January 21, 2021

Opinion of the Court by Justice VanMeter. All sitting; all concur. The Kentucky Supreme Court granted discretionary review to determine the proper procedure for a successor-in-interest to

substitute and revive a case following the death of the original party. Appellant Marcum, as executrix of Benton's estate, appealed the Court of Appeals' ruling that revival could only be accomplished by filing both a motion under KRS 395.278 and CR 25.01. The Supreme Court reversed, finding that while KRS 395.278 operated as the one-year statute of limitations within which a party must revive a case, the proper procedure for revival was fully contemplated in CR 25.01. The Court reasoned that the purpose of revival was to inform all parties, and the trial court, of the original party's death and the successor-in-interest's intention to continue the litigation. Consequently, the Court held that Marcum was only required to file a motion for substitution in accordance with CR 25.01 within the one-year limit set forth in KRS 395.278. The Court remanded the case with instructions to consider the unaddressed issues raised by the parties in the original appeal.

WRONGFUL DEATH

Bryan Keith Simms, Executor of the Estate of John Robert Simms v. Estate of Brandon Michael Blake, et al.

[2018-SC-0478-DG](#) January 21, 2021

Opinion of the Court by Justice Lambert. Minton, C.J.; Conley, Hughes, Keller, Lambert, and VanMeter, JJ., sitting. All concur. Nickell, J., not sitting. A probate case wherein the Court, as a matter of first impression, interpreted KRS 391.033 and KRS 411.137 (collectively "Mandy Jo's Law".) The trial court found that Appellant was precluded from recovering any portion of his biological son's wrongful death settlement award because he had "willfully abandoned" his son. On appeal to this court, Appellant argued (1) the trial court's failure to remove Appellees as co-administrator's of his son's estate warranted reversal; (2) the trial court mistakenly applied the preponderance of the evidence standard of proof; (3) the trial court clearly erred in finding that Appellant willfully abandoned his son; and (4) Appellees were equitably estopped from raising Mandy Jo's law. The Court rejected each of Appellant's arguments, holding: (1) that the failure to remove Appellees as co-administrators was harmless error; (2) that, under Mandy Jo's law, claimants must show that a parent willfully abandoned their child by a preponderance of the evidence; (3) that the trial court did not clearly err in finding that Appellant willfully abandoned his son; and (4) equitable estoppel did not prevent Appellee's from raising Mandy Jo's law as an affirmative defense.

WORKERS COMPENSATION

Ford Motor Company v. Deborah Duckworth, et al.

[2019-SC-0357-WC](#) January 21, 2021

Opinion of the Court by Justice Hughes. All sitting; all concur. Deborah Duckworth filed a worker's compensation claim in June 2013 for a cumulative trauma injury she sustained while working at Ford Motor Company. Duckworth claimed her injury manifested on November 8, 2007 and Ford filed a special answer alleging Duckworth's claims were barred by the statute of limitations. In its Opinion and Order the ALJ concluded that for cumulative trauma claims, the date a claimant is advised by a physician that she has a work-related condition is the date of injury for statute of limitations purposes, and a claimant is not required to self-diagnose a work-related injury. Further, pursuant to Kentucky Revised Statute (KRS) 342.185(1), if income benefit payments have been made, the claimant must file a claim within two years after the suspension of payments or within two years of the date of the accident, whichever is later. Because the parties stipulated that the last temporary total disability payment was made in August 2011, her claim was filed within two years of that date and thus not time barred. The

Workers' Compensation Board and the Court of Appeals affirmed the ALJ. The Supreme Court held that the ALJ has authority to determine the manifestation date for cumulative trauma injuries. The parties did not agree on the manifestation date, making that issue subject to further proceedings. The ALJ relied on the medical evidence in the record in identifying the manifestation dates of Duckworth's injury and did not exceed the scope of his authority. The ALJ properly applied KRS 342.185(1) in determining which occurred later – the manifestation date or the date of the last temporary total disability payment – before correctly concluding that Duckworth filed her claim within two years of the later date. Further, Ford was not deprived of due process because it had adequate notice and ample opportunity to be heard on the statute of limitations issue because "dates of injury" were listed as being at issue in the Benefit Review Conference Order and Ford filed a special answer soon after Duckworth filed her claim to specifically assert a notice and statute of limitations defense.

Charles Martin v. Warrior Coal LLC, et al.

2020-SC-0055-WC February 18, 2021

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Conley, Hughes, Keller, Nickell and VanMeter, JJ., concur. Lambert, J., dissents without separate opinion. In June 2017, the Kentucky General Assembly passed House Bill 223 which amended Kentucky Revised Statute (KRS) 342.040. Prior to its amendment, KRS 342.040 provided for 12% interest on workers' compensation income benefits that were due but unpaid. After the amendment, the statute now provides for an interest rate of 6% on due but unpaid benefits unless an exception applies. As reflected in the Legislative Research Commission Note to the statute, 2017 Kentucky Acts Chapter 17, Section 5 provides that "[KRS 342.040, as amended, shall] apply to all [workers'] compensation orders entered or settlements approved on or after June 29, 2017, the effective date of that Act." Charles Martin filed a workers' compensation claim in October 2017 as a result of his employment with Warrior Coal. He was awarded workers' compensation income benefits by an Administrative Law Judge (ALJ) on April 27, 2018 for his April 1, 2016 compensable injury. The ALJ applied the 12% interest rate to Martin's due and unpaid installments of compensation through June 28, 2017 and the 6% interest rate thereafter. Warrior Coal asked the ALJ to reconsider the decision to award interest at the 12% rate for all unpaid installments due prior to June 28, 2017. The ALJ declined reconsideration and the Workers' Compensation Board agreed with the ALJ, but the Court of Appeals found in favor of Warrior Coal on this issue. Held: By applying the interest rate amendment to orders and settlements approved on or after the Acts effective date, the General Assembly made clear that the date of an award or settlement is controlling, even though the award may encompass events which occurred before the statute was amended and made effective. Applying *Holcim v. Swinford*, 581 S.W.3d 37 (Ky. 2019), although the General Assembly's legislative statement regarding the temporal application of amended KRS 342.040 is not codified, because of the temporary nature of the language, codification was not required to give it effect. Based on the General Assembly's non-codified but express language regarding its intent with respect to the 6% interest rate set forth in the 2017 amendment, the entirety of Martin's benefit award is subject to the amended 6% interest rate.