

Kentucky Court Of Appeals
Cases of Note
July-August, 2021

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TORTS

**KATELYN TRAPP JOHNSON VS. THE ESTATE OF CHASE MATTHEW TRAPP
KNAPP BY MATTHEW KNAPP, ET. AL.**

[2019-CA-0902](#) 07/09/2021 2021 WL 2878590

Opinion by THOMPSON, KELLY; MAZE, J. (CONCURS) AND TAYLOR, J. (CONCURS)
Katelyn and Matthew conceived a child (Chase) in 2015. While pregnant with Chase, Katelyn told Matthew that he could either take the child after its birth or she would place the child up for adoption. When Chase was born in November 2015, he went to live permanently with Matthew. Chase died tragically in a car accident in October 2017. Thereafter, Matthew filed a wrongful death action on behalf of himself and as administrator of Chase’s estate. Matthew sought a declaratory judgment that Katelyn had abandoned Chase and was not entitled to any wrongful death proceeds pursuant to Mandy Jo’s law (Kentucky Revised Statutes 391.033 and 411.137). The Boone Circuit Court granted summary judgment in favor of Matthew and Katelyn appealed. The Court of Appeals held that the decision of whether to apply Mandy Jo’s law, which limits the ability of a parent who has “abandoned” their child from enriching themselves in the event that their child predeceases them, should be made on a case-by-case basis. See *Simms v. Estate of Blake*, 615 S.W.3d 14 (Ky. 2021); *Kimbler v. Arms*, 102 S.W.3d 517 (Ky. App. 2003). In this case, there were no factual disputes about whether Katelyn failed to provide monetary support or care for Chase from the time he was born until he died. The Court noted that despite Katelyn’s admirable motivations for letting Matthew raise Chase, it is an undisputed fact that she offered no financial support for Chase’s upbringing, nor did she make an effort to spend any time with Chase once he left the hospital following his birth. Accordingly, we affirm the trial court’s decision to grant summary judgment in favor of Matthew.

LEIGH ANN REEVES VS. WALMART, INC., ET. AL.

[2020-CA-0679](#) 07/02/2021 2021 WL 2753244

Opinion by THOMPSON, LARRY E; JONES, J. (CONCURS) AND LAMBERT, J. (CONCURS)

Leigh Ann Reeves was assaulted outside of a Walmart. She later sued Walmart for negligence for allegedly failing to keep the parking lot in a reasonably safe condition. The trial court granted summary judgment in favor of the defendants, and found that the assault was unforeseeable; therefore, Walmart owed no duty to Ms. Reeves. The Court of Appeals reversed and remanded. The Court held that Walmart had a duty to protect Ms. Reeves, but whether it breached that duty by failing to protect from a foreseeable injury was a factual issue. The Court relied heavily on *Shelton v. Kentucky Easter Seals Soc., Inc.*, 413 S.W.3d 901 (Ky. 2013), in holding that a foreseeability analysis should be done when considering breach of duty because it is an inherently fact-intensive issue, and that foreseeability was no longer an issue of law to be considered exclusively by the court.

CHRIS ARMSTRONG V. THE ESTATE OF STAR IFEACHO BY AND THROUGH THE ADMINISTRATOR OF HIS ESTATE, ET AL. and PEACE IFEACHO INDIVIDUALLY, ET AL. V. CODY BEGLEY IN HIS INDIVIDUAL CAPACITY
[2020-CA-0435](#), [2020-CA-0436](#) 08/20/2021 2021 WL 3686336

Opinion by CLAYTON, DENISE G.; K. THOMPSON, J. (CONCURS) AND L. THOMPSON, J. (CONCURS) Star Ifeacho was a sophomore at Paul Laurence Dunbar High School when he attended an after school basketball “open gym.” During the open gym, he complained to other students that he was having trouble breathing. He went to the athletic trainer’s office to speak to Cody Begley, who was an athletic trainer. As he was leaving Begley’s office, Star collapsed. Begley began applying CPR and instructed a student to find a coach. Chris Armstrong, a teacher and the assistant boys’ basketball coach, then entered the office and was asked by Begley to remain with him and assist, if necessary. Star was eventually transported to the emergency room but was unable to be revived and passed away. Star’s mother, individually, and in her capacity as administrator of Star’s estate, filed a negligence action against various coaches and administrators, including Armstrong and Begley, who filed motions for summary judgment on the ground they were entitled to either qualified official immunity or statutory immunity under KRS 411.148 or KRS 311.668. The trial court denied Armstrong’s motion and granted Begley’s motion. On appeal, the Court determined the trial court erred in denying Armstrong’s motion for summary judgment. At issue was whether the language contained in certain protocols imposed a ministerial duty or a discretionary duty upon Armstrong to retrieve an Automated External Defibrillator (AED). The Court concluded it was mandatory and ministerial that certain basic tasks required by the policy be completed; however, the exact manner or timeline for how long these tasks were to be completed was discretionary. The Court reversed the trial court’s order denying Armstrong’s motion for summary judgment, finding that Armstrong was entitled to qualified official immunity because he made a judgment call when determining it was more appropriate for him to remain with Begley to assist him in any manner requested rather than seeking out an AED when a student at Begley’s direction had already left to obtain one. As to Begley, the Court affirmed the trial court’s order granting Begley summary on the ground he was entitled to qualified immunity. Although Begley’s actions in administering medical care were ministerial, it was not his rendering of medical care that was the basis of the negligence claim. Instead, the claim was based upon Begley’s decisionmaking process in determining how to retrieve the AED in this emergency situation. His decision-making process included instructing others present on how to proceed, assigning the responsibility for retrieving the AED to others, and deciding how long to wait before designating 6 other individuals to retrieve a different AED. These actions were discretionary in nature, entitling him to qualified immunity.

WORKERS COMPENSATION

ANGELA R. HUFF INDIVIDUALLY, ET AL. V. SOUTHERN STATES SOMERSET COOPERATIVE, INCORPORATED
[2019-CA-1524](#) 08/13/2021 2021 WL 3572862

Opinion by COMBS, SARA W.; KRAMER, J. (CONCURS) AND L. THOMPSON, J. (CONCURS) David W. Huff was employed by Southern States Cooperative, Inc. (“Southern States”). He was killed on his employer’s premises in Harrodsburg while operating a front-end loader, which overturned. His wife, individually, and as executrix of his estate, asserted claims of product liability, breach of warranty, failure to warn, and negligence against various entities. She later filed an amended complaint, alleging Southern States Somerset Cooperative, Incorporated (“Somerset”), which was the original purchaser of the front-end loader, was negligent in maintaining the front-end loader. Somerset filed a motion to dismiss, arguing the claims against it were barred by up-the-ladder immunity under the Kentucky Workers’ Compensation Act, KRS

Chapter 342. In support of its motion, Somerset stated that Southern States had relationships with sixty member-owned local cooperatives, including Somerset, and those relationships were governed by management agreements. Pursuant to the management agreements, Southern States managed the business affairs of the local cooperatives, providing services including management supervision, training, assistance with local meetings and membership relations, publicity, engineering, marketing, the payments of dividends, and the procurement of supplies and commodities. Southern States also obtained workers' compensation insurance for the local cooperatives. The trial court entered an order granting Somerset's motion, finding that Mr. Huff's employer had secured the payment of workers' compensation benefits and that Somerset met the definition of a "contractor" entitled to up-the-ladder immunity. The Court reversed the trial court based upon the reasoning in *McMillen v. Ford Motor Co.*, No. 3:07-CV-309-S, 2009 WL 5169871 (W.D. Ky. Dec. 20, 2009), which states that Kentucky law limits the up-the-ladder defense to injuries sustained during work performed in the service of the entity seeking to assert the defense. Somerset was not entitled to up-the-ladder immunity because at the time of his death, Mr. Huff was not working for Somerset. 4 Instead, he was working for his "own and only" employer, Southern States, on his employer's premises.

WASTE MANAGEMENT V. JEFFREY MADDOX ET. AL.

2020-CA-1492 08/27/2021 2021 WL 3817561

Opinion by MAZE, IRV; GOODWINE, J. (CONCURS) AND KRAMER, J. (CONCURS) In November 2018, Jeffrey Maddox brought a claim for cumulative trauma disability occurring within the scope of his employment as a garbage tipper for Waste Management. The disability manifested following a work-related accident in December 2016. However, he had been treated for back pain going back to 2013, and he continued to work for Waste Management until April 2018. The primary issue before the ALJ concerned the timeliness of his notice of the disability to Waste Management. Maddox has a significant intellectual disability and could not recall being told by a physician that his cumulative trauma was caused by work activities. In addition, his medical records did not specify when he was told the disability was work-related. Nevertheless, the ALJ found that Maddox was most likely told by a physician that his condition was work-related no later than May 2018. The ALJ found that his notice in November 2018 was untimely. The ALJ also determined that the untimely notice was not excused because Maddox understood the obligation to timely report injuries. On appeal, the Board reversed. The Board found that the ALJ disregarded Maddox's uncontested testimony and relied on speculation to determine that he had been informed that the cumulative trauma was work-related in May 2018. The Board also found that the ALJ failed to properly consider Maddox's intellectual disability in considering whether any untimely notice was excused. Consequently, the Board remanded the matter to the ALJ for additional findings in accord with the proper standard of proof. On Waste Management's petition for review, the Court of Appeals affirmed in part and reversed in part. Regarding the factual finding concerning when Maddox was informed by a physician that his cumulative trauma was work-related, the Court noted that the ALJ was entitled to draw reasonable inferences from the evidence of record. The Court also pointed out that the ALJ was entitled to disregard Maddox's uncontested testimony as long as the ALJ gave substantial reasons for doing so. The Court held that the ALJ could draw a reasonable inference that Maddox's physician informed him that the cumulative trauma was work-related once the physician had recorded that determination in his notes. The Court also held that the ALJ set forth substantial reasons for discounting Maddox's lack of memory about when he was informed of that determination. As a result, the Court held that the Board improperly substituted its judgment on this factual determination. However, the Court affirmed the Board's holding that the ALJ applied an improper standard to determine whether Maddox's delay in giving notice was excused. The evidence was uncontested that Maddox has a significant intellectual disability, which limits his understanding of common concepts. While Maddox had given timely notice of

prior work-related injuries, the Court pointed out the trigger for notice of cumulative trauma may have been beyond Maddox's comprehension. Consequently, the Court agreed with the Board that the ALJ failed to properly consider the impact of Maddox's intellectual deficiencies concerning his ability to understand the necessity for giving notice and to understand what his physicians might have told him. As a result, the Court remanded the matter to the ALJ for a new determination of whether Maddox's failure to provide timely notice to Waste Management was excusable under KRS 342.200.