Kentucky Court Of Appeals
Cases of Note
September-October, 2021

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INSURANCE

KRISTINA D. BRATCHER V. STATE FARM FIRE AND CASUALTY COMPANY, ET AL

2020-CA-0680 09/03/2021 2021 WL 3953467

Opinion by McNEILL, J. CHRISTOPHER; KRAMER, J. (CONCURS) AND DIXON, J. (CONCURS AND FILES SEPARATE OPINION) Appellant Kristina Bratcher was injured in a motorcycle accident while riding on a motorcycle operated by Raymond Negron. Appellant filed a claim for UIM benefits under three policies issued by State Farm to her parents, Don and Tina Bratcher. The policy Declarations Page 3 listed the named insured as "Bratcher, Don & Tina L., 439 Hillcrest Ave., Louisville, KY 40206- 1508." At the time of the accident, Appellant was 34 years old and lived at a rental property owned by her parents. Her mother was living with her. Appellant had not lived with both of her parents at the 439 Hillcrest address since she was 17 years old. Appellant was entitled to coverage only if she qualified as a "resident relative" under the policy's terms. Appellant filed suit in Jefferson Circuit Court against State Farm seeking UIM benefits. State Farm moved for summary judgment, arguing Appellant did not qualify as a resident relative under the policy. The Jefferson Circuit Court granted State Farm's motion because she did not reside primarily with the first person shown as a named insured on the declarations page, which the court found to be Don Bratcher because his name appeared first. Appellant argued the policy was ambiguous because the "named insured" on the Declarations Page is singular, and her parents are listed as a single insured. The Court of Appeals reversed the Jefferson Circuit Court and remanded for further proceedings, holding that both of her parents are first-named insureds under the policy, and there was an issue of fact as to whether Appellant resided primarily with her mother at the time of the accident.

TORTS

MARK JOSEPH SMITH V. HERITAGE HILL GOLF CLUB

2019-CA-1442 10/15/2021 2021 WL 4805098

Opinion by TAYLOR, JEFF S.; COMBS, J. (CONCURS) AND DIXON, J. (CONCURS) This appeal arises from a golf cart accident in which the golf cart in front of Appellant Mark Joseph Smith (Smith) flipped over in front of him. While trying to avoid it, Smith also flipped his golf cart and sustained injuries including a broken arm. He filed a lawsuit in Bullitt Circuit Court and asserted a negligence claim against Appellee Heritage Hill Golf Club (Heritage), alleging its golf carts were defective and that the golf course was negligently designed. After the trial court granted Heritage's motion to disqualify Smith's expert witness from testifying as a discovery sanction, Heritage renewed its motion for summary judgment. The trial court granted the motion and dismissed Smith's claims against Heritage. The Court of Appeals affirmed. On appeal, Smith argued there were genuine issues of material fact as to whether the golf carts were defective and whether the golf course was negligently designed; however, Smith provided no evidence that the

golf carts were defective. Speculation and conjecture about an alleged defect does not create a genuine issue of material fact. The Court further concluded that nothing in the record indicated licensed professionals were involved in the design or construction of the golf course. Therefore, Smith's lack of an expert witness would not have warranted summary judgment on the standard of care or liability issues. The Court, however, determined Smith's claim for injuries while playing golf was essentially a premises liability negligence action and that summary judgment was still proper under applicable Kentucky law.

BRADWELL SCOTT CHANEY, ET AL. V. HEATHER FIELDS
2020-CA-0254 10/29/2021 2021 WL 5021579
Opinion by LAMBERT, JAMES H.; CETRULO, J. (CONCURS) AND TAYLOR, J. (CONCURS) Appellants Bradwell Scott Chaney and Pikeville Foot Care Center, Inc. appeal from an order granting Appellee Heather Fields a judgment in the amount of $17,330.37, plus 6% interest, for funds withheld from her paycheck and converted to Appellant Chaney's benefit. On appeal, Appellants argued that actions regarding the liability of an employer to deduct and withhold taxes are procedurally barred by 26 USC § 3403 and that the trial court lacked jurisdiction to hear the case. The Court of Appeals affirmed, concluding that 26 USC § 3403 and the associated caselaw bar taxpayers from bringing suit to restrain the withholding of funds by employers from their paychecks, which was not an issue in this case. Instead, the Court agreed with Appellee that she was not statutorily barred from bringing her suit for conversion and that she had proven the elements of the tort. The Court further concluded that Appellants' jurisdictional argument was also without merit because the trial court had subject matter jurisdiction to decide Appellee's common law claim of conversion.

WORKERS COMPENSATION

MARIA JIMENEZ V. LAKSHMI NARAYAN HOSPITALITY GROUP LOUISVILLE
2021-CA-0515 09/10/2021 2021 WL 4126874
Opinion by COMBS, SARA W.; ACREE, J. (CONCURS) AND MAZE, J. (CONCURS) Appellant Maria Jimenez slipped and fell while working as a housekeeper for Holiday Inn. She filed a Workers' Compensation claim for injuries to her head, neck, left shoulder, and back. The administrative law judge (ALJ) awarded her temporary total disability benefits, found she did not have a permanent injury, and dismissed her claims for future medical and income benefits. Neither party appealed. Two years later, she filed a motion to reopen, claiming a change in disability as shown by objective medical evidence. The ALJ granted the motion and awarded her permanent partial disability benefits. Holiday Inn moved for reconsideration. In an amended opinion, the ALJ concluded that KRS 342.125 renders the doctrine of res judicata inapplicable. Holiday Inn appealed to the Workers Compensation Board (the Board), and the 5 Board reversed and remanded the claim to the ALJ with direction to dismiss the reopening as barred by res judicata. The Court of Appeals held the Board erred in determining that KRS 342.125 precludes re-opening a claim where temporary total disability was awarded. The Board misapplied the doctrine of res judicata in administration proceedings, confusing it with its application in judicial proceedings. The Court of Appeals reversed the opinion of the Board and directed it to reinstate the ALJ's award.