

Kentucky Supreme Court
Cases of Note
July-August, 2021

Note: To open hyperlink, take one of the following steps:

1. Hold down the control (“Ctrl”) key and click on the link.
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Note: No Court in July

TORTS

Keeneland Association, Inc. v. Roy J. Prather, et al. AND Sallee Horse Vans, Inc. v. Roy J. Prather, et al.

[2020-SC-0067-DG](#) [2020-SC-0075-DG](#) August 26, 2021

Opinion of the Court by Justice Hughes. Minton, C.J.; Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. VanMeter, J., not sitting. During the 2016 September Yearling Sale at Keeneland, a horse broke loose from its handler and headed toward pedestrians who were crossing a path between barns. One pedestrian, Roy J. Prather, 5 fell while attempting to flee and fractured his shoulder. Prather and his wife, Nancy Prather, filed suit in Fayette Circuit Court alleging various negligence claims against Keeneland and Sallee Horse Vans, Inc., the transportation company that agreed with the horse’s purchaser to transport it to its destination. Keeneland and Sallee argued that the Prathers’ claims were barred by Kentucky Revised Statute (KRS) 247.402, a provision of the Farm Animals Activity Act (FAAA) that limits the liability of farm animal activity sponsors and other persons as to claims for injuries that occur while engaged in farm animal activity. Finding the FAAA applicable, the trial court granted summary judgment in favor of Keeneland and Sallee. On appeal, the Court of Appeals raised a new legal theory sua sponte and reversed the trial court’s decision. Noting that in a separate statute the legislature recognized the sale of race horses as integral to horse racing activities and that horse racing activities are specifically exempted from the FAAA, the appellate court concluded the trial court erroneously dismissed the Prathers’ claims. Prather qualified as a farm animal activity participant, Keeneland qualified as a farm animal activity sponsor and Sallee was engaged in farm animal activity at the time of Prather’s injury. The FAAA generally precludes Prather, who was reasonably warned of the inherent risks of the farm animal activity at Keeneland, from bringing a claim against Keeneland and Sallee. Prather failed to prove that either the defendants were engaged in horse racing activities, which would render the FAAA inapplicable, or that one of the exceptions in KRS 247.402(2) applied. Nothing in the record supported a conclusion that any of the parties were engaged in horse racing activities because the only activities occurring on Keeneland premises were the transport of horses, by hand, to and from the backside of the track, sales arena and transport vans where the horses were loaded and taken off the premises after being purchased. Further, Prather’s injury stemmed from an inherent risk of engaging in farm animal activity. While it was unclear what precisely caused the horse to break loose from its handler, the FAAA recognizes the unpredictability of a farm animal as an inherent risk, KRS 247.4015(9)(b). The injury unquestionably stemmed from the horse’s behavior in escaping the handler. Holding Keeneland or Sallee liable for Prather’s injury would contradict the purpose of the FAAA and the protections afforded to farm animal activity sponsors, professionals and persons for farm animal behavior. The Supreme Court reversed the Court of Appeals and reinstated the order granting summary judgment.

IMMUNITY

Chris Meinhart, Administrator of the Estate of Demtra Boyd, et al. v. Louisville Metro Government, at al.

2019-SC-0237-DG August 26, 2021

Opinion of the Court by Justice Nickell. All sitting; all concur. Louisville Metro Police Department officer engaged in a pursuit of a suspected perpetrator of an assault and purse snatching. Less than two minutes into the pursuit, the suspect ran a traffic light and struck another vehicle, killing a minor passenger and injuring multiple others. Decedent's estate and injured parties filed suit. After several years of discovery and litigation, including an interlocutory appeal to the Court of Appeals, the trial court denied officer's renewed motion for summary judgment on qualified immunity grounds finding his actions were ministerial and material issues of fact 6 existed. The trial court further denied Louisville Metro Government's motion for summary judgment on sovereign immunity grounds. On interlocutory appeal, the Court of Appeals expressly rejected the trial court's conclusion officer's actions in initiating and continuing pursuit were ministerial, found them to be discretionary, and held officer was entitled to qualified immunity. The Court of Appeals, also concluding Louisville Metro Government was entitled to sovereign immunity, fully reversed the trial court and remanded for entry of orders of dismissal. On discretionary review, the Supreme Court affirmed the Court of Appeals. First, it rejected appellants' argument interlocutory appeals are inappropriate in qualified immunity cases and reiterated the fundamental purposes of immunity. Next, after examining the Standard Operating Procedures covering pursuits, the Supreme Court concluded significant, independent professional judgment is necessary in making the determination of whether to initiate, continue, or terminate a pursuit, thereby rendering such decisions discretionary and entitled to qualified immunity. Next, the Supreme Court held appellants had failed to produce evidence establishing the officer acted in bad faith despite the years of discovery and appellants' attempts to piece together snippets of testimony to establish same were unconvincing. Finally, observing the matter had been pending for nearly fourteen years, the Court noted this case illustrated an extreme failure of one of the purposes of immunity which is to free the possessor from the burdens of defending the action.

INJUNCTIVE RELIEF

Daniel J. Cameron, in his Official Capacity as Attorney General of the Commonwealth of Kentucky v. Andy Beshear, in his Official Capacity as Governor of the Commonwealth of Kentucky

2021-SC-0107-I August 21, 2021

Opinion of the Court by Justice VanMeter. All sitting; all concur. Hughes, J., concurs by separate opinion in which Minton, C.J., joins. The Supreme Court granted transfer of this case from the Court of Appeals to review its decision to uphold the temporary injunction issued by the Franklin Circuit Court which enjoined implementation of certain legislation enacted during the 2021 session of the General Assembly (House Bill 1, Senate Bill 1, and Senate Bill 2) which governed Governor Andy Beshear's ability to respond to emergencies as granted in KRS Chapter 39A, pending an adjudication of the constitutionality of that legislation. As a threshold matter, the Supreme Court held that the case presented a justiciable controversy and thus was reviewable. As to the propriety of the issuance of the temporary injunction, the Supreme Court held that the trial court's issuance of injunctive relief was unsupported by sound legal principles because occasioned by an erroneous application of the law. Specifically, the Supreme Court found the Governor failed to meet the requirements set forth in *Maupin v. Stansbury*, 575 S.W.2d 695, 699

(Ky. App. 1978), to obtain a temporary injunction: show a probability of irreparable injury, present a substantial question as to the merits of his Complaint, and persuade the court that the equities balanced in favor of issuance. Accordingly, the Court reversed the trial court's issuance of a temporary injunction and instructed the court, on remand, to dissolve the injunction and proceed with a review of the merits of the Complaint.

Andy Beshear, in his Official Capacity as Governor of the Commonwealth of Kentucky, et al. v. Goodwood Brewing Company, LLC, D/B/A Louisville Taproom, Frankfort Brewpub, and Lexington Brewpub, et al.

[2021-SC-0126-I](#) August 21, 2021

Opinion of the Court by Justice Keller. All sitting; all concur. Goodwood Brewing Company, LLC, d/b/a Louisville Taproom, Frankfort Brewpub, and Lexington Brewpub; Trindy's, LLC; and Kelmarjo, Inc., d/b/a The Dundee Tavern (collectively referred to as "Goodwood") filed a lawsuit in Scott Circuit Court against Governor Andy Beshear, Cabinet for Health and Family Services Secretary Eric Friedlander, and the Commissioner of the Kentucky Department of Public Health, Dr. Steven Stack (collectively referred to as "the Governor") seeking declaratory relief, a temporary injunction, and a permanent injunction regarding the Governor's orders related to COVID-19. Goodwood also filed a motion for a temporary injunction pursuant to Kentucky Rules of Civil Procedure (CR) 65.04. Goodwood's CR 65.04 motion for a temporary injunction was heard in the Scott Circuit Court during which the Governor requested a date for an evidentiary hearing where he could present evidence regarding the public interests at stake as well as the likelihood of harm. The trial court denied the Governor's request. After hearing arguments, the Scott Circuit Court entered an opinion and order granting temporary injunctive relief to Goodwood. The circuit court enjoined the Governor from issuing or enforcing new restrictions against "only these specific [plaintiffs]" and enjoined the "Defendants and their designees and agents . . . from enforcing against only the individual Plaintiffs herein at their now-existing locations" a host of specifically enumerated executive orders, administrative regulations, and directives. The Governor sought relief from the Scott Circuit Court's order in the Court of Appeals pursuant to CR 65.07, and the Supreme Court accepted transfer of the case. The Supreme Court held that evidentiary hearings at which witnesses testify and are cross-examined are the preferred procedure to resolve motions for a temporary injunction. In this case, the Scott Circuit Court abused its discretion in failing to hold an evidentiary hearing, and the Court vacated its order granting a temporary injunction. The Court declined to remand the issue back to the trial court for an appropriate hearing, holding the issues surrounding the temporary injunction were moot, as the specific orders, regulations, and directives the Governor was enjoined from enforcing had been rescinded and there was no practical relief the Court could grant either party.

WORKERS COMPENSATION

Gloria Dowell, Widow of William Bruce Dowell v. Matthews Contracting, et al. AND Terry Adams v. Excel Mining, LLC, et al.

[2020-SC-0170-WC](#) [2020-SC-0137-WC](#) August 26, 2021

Opinion of the Court by Chief Justice Minton. All sitting. Conley, Hughes, Keller, Lambert, and VanMeter, JJ., concur. Nickell, J., concurs by separate opinion. In this matter, the Supreme Court addressed whether the 2018 amendment to Kentucky Revised Statute (KRS) 342.730(4), which terminates workers' compensation income benefits when the benefit-recipient reaches the age of 70 or four years from the date of injury or last injurious exposure, whichever event occurs last, violates the Contracts Clause of the federal and state constitutions. The Court rejected Adams's

and Dowell's arguments and instead found that the workers' compensation system is statutory, not contractual, in nature. Accordingly, the Court affirmed the Court of Appeals, holding that those receiving or entitled to claim benefits do not have contractual rights that the statutory amendment could infringe. Justice Nickell concurred to explain that these constitutional arguments were properly preserved and strict compliance with CR 73.03 was met.

Cheryl Cates v. Kroger, et al. AND Ronnie Bean v. Collier Electrical Service, et al.
[2020-SC-0275-WC](#) [2020-SC-0277-WC](#) August 26, 2021

Opinion of the Court by Chief Justice Minton. All sitting. Conley, Hughes, Keller, Lambert, and VanMeter, JJ., concur. Nickell, J., concurring in part and dissenting in part by separate opinion. Plaintiffs, Cates and Bean, brought separate appeals arguing that the 2018 amendment to KRS 342.730(4), which terminates workers' compensation income benefits when the recipient reaches the age of 70 or four years from the date of injury or last injurious exposure, whichever event occurs last, is unconstitutional. The plaintiffs argued the amendment violated the state and federal Equal Protection Clauses because it discriminates based on the income-benefits recipient's age. They also argued the statute is unconstitutional special legislation because it applies only to older income-benefits recipients. Both panels of the Court of Appeals upheld the statute's age classification on equal protection grounds finding that it was rationally related to a legitimate state interest in preventing workers' 11 compensation income-benefits recipients from receiving duplicate payments in the form of retirement benefits. Likewise, panels rejected the special-legislation challenges to the statute, holding that the statute treated all older income-benefits recipients alike. The Supreme Court affirm the Court of Appeals in both cases and agrees with its reasoning. Additionally, the Supreme Court, like the Court of Appeals in Bean's case, chose to address Bean's improperly preserved constitutional arguments because he had substantially complied with CR 73.03. Justice Nickell concurred with the majority's holding that the statute is constitutional but dissented in the majority's decision to find Bean had substantially complied with CR 73.03.