Kentucky Supreme Court
Cases of Note
November-December, 2021

Note: To open hyperlink, take one of the following steps:
1. Hold down the control ("Ctrl") key and click on the link.
2. Right-click on the link and select "Open Hyperlink".

Note: No Court in November

ARBITRATION

Legacy Consulting Group, LLC, et al. v. Brenda Gutzman, In Her Capacity as the Executrix of the Estate of Grace W. McGaughey, Deceased, et al.
2020-SC-0288-DG December 16, 2021
Opinion of the Court by Justice VanMeter. All sitting; all concur. Presenting as an interlocutory appeal from the Fayette Circuit Court, which denied Money Concepts Capital Corporation and Legacy Consulting Group, LLC's joint motion to enforce arbitration terms in their agreement with Grace McGaughey, the primary issue before the Supreme Court was whether Ms. McGaughey and, by extension, her estate were bound by the arbitration provisions contained within the agreement which she signed with Money Concepts and Legacy Consulting in December 2009 when she purchased a variable annuity with Jackson National Life Insurance Company. The Court held that while under federal and state law, arbitration agreements validly entered into are generally enforceable, arbitration agreements contained within insurance contracts are not enforceable. The Court agreed with the Court of Appeals' finding that "the product at issue is for insurance based on the description of the portfolio as a fixed account and the regular payments of the same amount . . . consistent with an insurance product." Because the investment product was insurance, the arbitration agreement was unenforceable, KRS 417.050(2), and neither Ms. McGaughey nor her estate were bound by its terms.

TORTS

Lindsey Childers, as Administratrix of the Estate of Cameron Pearson, et al. v. William S. Albright, et al.
2019-SC-0226-DG December 16, 2021
Opinion of the Court by Special Justice Tennyson. Minton, C.J.; Conley, Hughes, Keller, and VanMeter, JJ.; and Special Justice Cheryl U. Lewis and Special Justice Julie A. Tennyson sitting. All concur. Lambert and Nickell, JJ., not sitting. William Albright was indicted by a Jefferson County Grand Jury on charges of murder and first-degree assault following a dispute outside of the gun store where Albright worked. The incident resulted in Cameron Pearson being killed and others being injured. In his criminal case, the trial court found Albright was immune from criminal prosecution under KRS 503.085, Kentucky's "Stand Your Ground" law, and ordered that the indictments against him be dismissed with prejudice. Various members of the Pearson Family, in their individual and representative capacities, filed a civil suit in Jefferson Circuit Court against Albright and Hardshell Tactical, LLC, the business at which Albright was working at the time of the shooting, alleging negligence and wrongful death claims. Albright and Hardshell sought dismissal of the civil action, arguing that collateral estoppel and Albright's grant of KRS 503.085(1) immunity in his criminal case required that they be immune from civil

action. The trial court denied the motion, and Albright and Hardshell appealed the denial. The Court of Appeals reversed, finding that collateral estoppel applied and that the grant of self-defense immunity in Albright's criminal case barred continued litigation in the civil action.

Louisville SW Hotel, LLC, et al. v. Charlestine Lindsey, et al.
2019-SC-0539-DG December 16, 2021
Opinion of the Court by Justice Lambert. All sitting. Minton, C.J.; Conley, Hughes, and VanMeter, JJ., concur. Keller, J., concurs in result only. Nickell, J., concurs in part and dissents in part, by separate opinion. A five-year-old child tragically drowned in the defendant hotel's pool while at a birthday party. The jury found that the child's mother was 65% responsible for the child's death, and that the hotel was 35% responsible. The jury awarded compensatory damages for medical and funeral expenses totaling $211,770.25, or $74,119.59 after apportionment. It awarded $0 dollars for the compensatory damages of loss of future earning potential, pain and suffering, and loss of consortium. The jury also awarded $3 million in punitive damages. Following the defendants' motion for judgment notwithstanding the verdict, the trial court ruled that remittitur as to the punitive damages was required. It determined that a 5-1 ratio between punitive and compensatory damages was appropriate. It applied that multiplier to the entire, pre-apportionment compensatory damages award, and reduced the punitive damage award to $1,058,851.25. The Court held first that the trial court did not err by instructing the jury on punitive damages, as the plaintiffs presented sufficient evidence to show that the defendants acted with gross negligence as to the maintenance of the pool and failure to employ sufficient staff. The Court next held that a limited retrial on the compensatory damages of loss of future earning potential, pain and suffering, and loss of consortium were improper. First, regarding the child's loss of future earning potential, the Court 7 overruled Turfway Park Racing Ass'n v. Griffin, 834 S.W.2d 667 (Ky. 1992), which held that a jury is not permitted to award zero dollars in damages in a case involving the wrongful death of a healthy and capable child. The Court reasoned that loss of future earning potential for a deceased child in a wrongful death case is the only category of compensatory damages for which the jury is not free, in its discretion, to award zero dollars in damages. Next, the Court upheld the jury's zero-dollar award for the child's pain and suffering because the jury was presented with sufficient evidence to award pain and suffering, but chose not to. Lastly, as a matter of first-impression, the Court declined to adopt a rule mandating that juries award some amount of damages for loss of consortium to the parent(s) in cases involving the wrongful death of a child. It therefore upheld the jury's zero-dollar award for loss of consortium. Next, the Court held that the 5-1 ratio utilized by the trial court to reduce the punitive damage award was not excessive under BMW of North America v. Gore, 517 U.S. 559 (1996). Finally, as a matter of first impression, the Court adopted the majority rule that a remittitur ratio must be applied to the pre-apportionment compensatory damage amount, rather than the post-apportionment amount.

City of Versailles, et al. v. Shirley Jane Johnson
2020-SC-0431-DG December 16, 2021
Opinion of the Court by Justice VanMeter. All sitting; all concur. The City of Versailles petitioned for discretionary review of the Court of Appeals' decision reversing the trial court's grant of summary judgment in favor of all named defendants. The Court of Appeals determined that Shirley Johnson was an invitee when she was injured in 2013 while visiting the monument marking her son's grave at the Rose Crest Cemetery, which the City of Versailles maintains, and that the cemetery had an affirmative duty to inspect and repair the monument. The Supreme Court reversed, finding that Johnson, not the cemetery, owned the monument which injured her, and that the cemetery was not obligated to inspect and repair the monument, regardless of Johnson's status as either an invitee or licensee while on cemetery grounds. The Court observed

that while status-based duties continue to serve Kentuckians well in general premises liability matters, cemeteries are uniquely situated among public spaces in the Commonwealth. The Court distinguished between the purchase of a grave plot and the resulting easement – a property right which, if unassigned, passes to the owner's descendants – and any monuments or grave stones placed upon the grave plot – which are the personal property of the purchaser. The Court held that unless specifically detailed in a perpetual care agreement, the cemetery where the monument is located has no property interest in the monument and consequently no duty towards its maintenance.

WORKERS COMPENSATION

Michael O'Bryan v. Zip Express (Correctly Identified as Ramp Logistics, LLC), et al. 2020-SC-0262-WC December 16, 2021

Opinion of the Court. All sitting; all concur. Appellant, Michael O'Bryan was injured in a work-related automobile accident during the course of his employment for Appellee, Zip Express. O'Bryan filed a workers' compensation claim. The administrative law judge found he was permanently totally disabled and should receive benefits as long as he remained disabled. Zip Express appealed to the Workers' Compensation Board, arguing O'Bryan's benefits should terminate at age 70 under a newly-amended version of KRS 342.730(4). O'Bryan countered, arguing the amendment is unconstitutional on several grounds. The Board could not determine the constitutionality of the statute, but held that it applied to O'Bryan's case. O'Bryan appealed to the Court of Appeals, which affirmed and held the statute is constitutional. O'Bryan appealed to the Supreme Court of Kentucky, which affirmed the Court of Appeals. The Supreme Court held the statute did not violate O'Bryan's right to equal protection under the law, his due process rights, that it does not amount to the exercise of an absolute and arbitrary power, that it is not special legislation, and that it did not violate the requirement that all bills be read three times before each house of the legislature