Kentucky Supreme Court
Cases of Note
May-June, 2022

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 May

SUMMARY JUDGMENT:
Erie Insurance Exchange v. Megan Johnson, et al.
2021-SC-0312-DG June 16, 2022
Opinion and Order of the Court. All sitting; all concur. Megan Johnson and Terri Reed, following treatment for injuries sustained in a motor vehicle accident, sought to direct the order in which their medical expenses were paid from their BRB (basic reparation benefits) under Kentucky's Motor Vehicle Reparations Act. Erie Insurance Exchange declined to follow their direction, instead initiating a declaratory judgment action against Johnson and Reed in Floyd Circuit Court. The trial court issued several orders, but none of those orders were final and appealable. Nonetheless, Erie appealed, and the Court of Appeals determined that Johnson and Reed should be able to direct their payments within an element of loss. The Supreme Court granted discretionary review. Because there was no final and appealable order below, the Supreme Court vacated the opinion of the Court of Appeals and dismissed the appeal.

Note: IIK filed an amicus brief in this case.

TORTS

Charles Armstrong, Administrator of the Estate of Craig Armstrong v. The Estate of Jonathan Elmore, et al.
2020-SC-0408-DG June 16, 2022
Opinion of the Court by Justice Conley. Minton, C.J.; Keller, Lambert, Nickell, and VanMeter, JJ., sitting. All concur. Hughes, J., not sitting. This case came before the Supreme Court for a second time after rendering its decision in Travelers Indem. Co. v. Armstrong, 565 S.W. 3d 550 (Ky. 2018). In the original decision, the trial court had granted summary judgment to the auto dealers, ruling that Jonathan Elmore was the owner of the vehicle which had crashed and caused the deaths of both Elmore and of Craig Armstrong, his passenger. Travelers affirmed the trial court's summary judgment, reversing the Court of Appeals. Back at the trial court, the Armstrong Estate filed a motion to amend its complaint to file a claim against another auto dealer, DeWalt, as the statutory owner of the vehicle. The trial court granted the motion. DeWalt filed a motion to dismiss, which was also granted. On appeal, the Court of Appeals affirmed the trial court's dismissal based on law of the case doctrine citing to Travelers.

The Supreme Court granted discretionary review and affirmed. The decision in Travelers affirmed the trial court's summary judgment which declared that Elmore was the statutory owner. The issue of who owned the vehicle was, therefore governed by law of the case. The Estate argued against application of the doctrine based on the intervening change in law

exception. But the intervening change in law had occurred as a result of Travelers and, therefore, was inapplicable. The Estate also argued the language in Travelers was dicta, but that argument failed as the issue in Travelers was to determine who the statutory owner of the vehicle was at the time of the crash. Finally, the Estate argued law of the case only applies when the same parties are arguing the same issues and, because DeWalt was not a party to Travelers, the doctrine was inapplicable. The Court rejected that argument, pointing out the lack of authority for the proposition that law of the case required the same parties being present. Instead, because the Estate was seeking to continue to litigate the issue of the statutory owner of the vehicle—which had been determined on summary judgment and affirmed by this Court previously—law of the case was applicable.

WORKERS COMPENSATION

Jarvis Helton v. Rockhampton Energy, LLC, et al.
2021-SC-0248-WC June 16, 2022
Opinion of the Court by Justice Hughes. Minton, C.J.; Conley, Keller, Nickell, and VanMeter, JJ., sitting. All concur. Lambert, J., not sitting. Jarvis Helton appealed from a Court of Appeals' decision affirming the Workers' Compensation Board's reversal of an Administrative Law Judge's (ALJ) application of the 2x multiplier in Kentucky Revised Statute (KRS) 342.730(1)(c)2, the provision that doubles a claimant's benefits if the claimant returns to work after injury at the same or higher wages but then experiences a cessation of that employment. Helton suffered a work-related injury that manifested on November 16, 2018, and continued working his normal job until he was laid off for economic reasons on September 2, 2019. The ALJ determined that since Helton earned no wage after the lay-off, he qualified for the 2x multiplier. The Board reversed, and the Court of Appeals agreed.

The Kentucky Supreme Court affirmed the Court of Appeals. Helton did not "return" to work because he never left work. The Court found similarity to Bryant v. Jessamine Car Care, No. 2018-SC-000265-WC, 2019 WL 1173003 (Ky. February 14, 2019), in which the Court held that a continuation of work is not a return to work. To qualify as a "return," there must be a cessation followed by a resumption. Because Helton indisputably continued to perform his regular job after his injury and only ceased working when he was laid off due to the mine closing, no "return" to work occurred because there was no cessation followed by a resumption. While the Court recognized that Helton's employment with Rockhampton ended for reasons he could not control, the purposes of KRS 342.730(1)(c)2 are to encourage continued employment and create an incentive to return to work. Awarding the 2x multiplier did not accomplish the recognized objectives and does not comport with the plain language of the statute.

Tractor Supply v. Patricia Wells, et al.
2021-SC-0286-WC June 16, 2022
Opinion of the Court by Justice Conley. All sitting; all concur. Patricia Wells was injured in August 2018. The ALJ made a finding of fact that she was unable to return to her previous work, therefore applied the three multiplier under KRS 342.730(1)(c)1. She was subsequently fired for allegedly filing false information on a work report. Tractor Supply moved for further findings of fact, arguing this Court's holding in Livingood v. Transfreight, LLC, 467 S.W.3d 249 (Ky. 2015), precluded application of the three-multiplier. The ALJ and Worker's Compensation Board both concluded Livingood was not applicable. On appeal, the Court of Appeals affirmed.

The Supreme Court unanimously affirmed the Court of Appeals. Livingood's holding was based on the totality of the text of KRS Chapter 342, to hold that the two multiplier did not apply when a claimant's conduct proximately causing his cessation of employment is "shown to have been an intentional, deliberate action with a reckless disregard of the consequences either to himself or to another." Id. at 259. In this case, the Supreme Court ruled "[t]he three-multiplier benefit is concerned with a finding of disability, and not tied to any condition of employment. Therefore, application of the general rule that no claimant should profit by his or her misconduct serves no substantive purpose regarding the three-multiplier." Because Wells did not gain or prolong any benefit as a result of her alleged misconduct, the rule was inapplicable. The Court concluded that nothing in the statutory text or facts of the case justified extending Lviningood's holding to KRS 342.730(1)(c)1.

Tracy Scott Toler v. Oldham County Fiscal Court, et al.
2021-SC-0356-WC June 16, 2022
Opinion of the Court by Justice Lambert. All sitting; all concur. The employee suffered a work-related injury to his left knee requiring surgical repair. To dispute the employee's entitlement to an additional impairment rating for pain, the employer submitted a report by a physician, Dr. Brigham, who did not have a medical license issued by the Commonwealth of Kentucky. Dr. Brigham conducted a review of the employee's medical records, but did not physically examine him. Dr. Brigham opined that the employee was not entitled to an additional impairment rating for pain. The employee objected to the admission of Dr. Brigham's report as evidence before the ALJ on the basis that he was not a "physician" as that term is defined in KRS Chapter 342. The ALJ disagreed and allowed the report to be admitted as evidence. The Workers' Compensation Board and the Court of Appeals affirmed.

The Supreme Court reversed, and held that Dr. Brigham did not meet the statutory definition of "physician" because he does not hold a Kentucky medical license. KRS 342.0011(32) declares that "[a]s used in this chapter, unless the context otherwise requires . . . 'Physician' means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth[.]" The Court held that the context of submitting a physician's report as evidence did not compel the definition of physician to be expanded to include individuals not licensed in Kentucky in contravention of the plain language of the statute. The Court further held that the employee's argument that Dr. Brigham was unqualified to determine whether he was entitled to an additional impairment rating for pain because he did not physically examine him was moot. The Court vacated the ALJ's opinion and order and remanded for further proceedings.