

Kentucky Court Of Appeals
Cases of Note
July-August, 2022

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TORTS

CHARLOTTE A. HOWARD, ET AL. v. THE CITY OF ELIZABETHTOWN KENTUCKY, ET AL. AND JEREMY STUBBS V. CHARLOTTE A. HOWARD, ET AL. [2020-CA-0124-MR](#) 07/01/2022 2022 WL 2376258 [2020-CA-0133-MR](#)

Opinion by MCNEILL, J. CHRISTOPHER.; CALDWELL, J. (CONCURS) AND MAZE, J. (CONCURS) The Court of Appeals affirmed an order of the Hardin Circuit Court dismissing Appellants’ claims on summary judgment. Appellants sought damages in relation to a personal injury action resulting from an errant softball that was hit during a tournament held at a public park which struck and shattered the passenger side window of a passing vehicle containing the Appellants. In the initial complaint filed on August 26, 2014, the Appellant named the City of Elizabethtown (city) and the softball team, Kentucky Kaos (the softball team), among the defendants alleged to be liable. The circuit court dismissed the claims filed against the city on the grounds that the Kentucky Recreational Use Statute, -6- KRS 411.190, barred the asserted claims against it. The claims against the softball team were also dismissed after it was argued that it was an unincorporated association incapable of being sued. An amended complaint was ultimately filed on January 23, 2017 naming two individuals, Steven Widmer (Widmer), and Jeremy Stubbs (Stubbs), as liable parties. Widmer helped purchase liability insurance for the event and Stubbs was the softball team coach. Widmer was granted summary judgment on a finding the claims did not relate back to the original complaint and were thus barred by the statute of limitations. Stubbs was denied summary judgment on his asserted statute of limitations defense but ultimately granted summary judgment denying the Appellants’ res ipsa loquitur claims. On appeal, the Appellants asserted that dismissal of the city and the softball team was erroneous due to the fact that the injuries were sustained outside the city-owned property from on-site recreational activities the Appellants were not engaged in and due to an asserted factual dispute over the unincorporated status of the softball team. The Appellants also sought to reverse the summary judgments made in favor of Widmer and Stubbs. Stubbs initiated a cross-appeal seeking to challenge the denial of summary judgment on his statute of limitations claim. The Court held the trial court’s rulings were proper because KRS 411.190 immunized the city from liability based on the statute’s plain language which covered all injuries from recreational activities both occurring on the premises and caused by participants thereon. Both the complaint and the response specifically identified the softball team as an unincorporated entity, and the response further stated that it was “not a legal entity doing business” within the state thus further supporting the lower court’s findings. The trial court’s summary judgment order on the running of the statute of limitations was upheld on the basis that the Appellants failed to offer any substantive argument and instead only asserted an unsupported position that the trial court could not conduct an evidentiary hearing on a motion for summary judgment. The Court further affirmed the summary judgment denying the Appellants’ res ipsa loquitur claims because no evidence supported the contention that Stubbs had control over the cause of the injury. The Court deemed Stubbs’ crossappeal to be moot based on his entitlement to summary judgment on the res ipsa loquitur issues.

WILLIAM N. TIPTON, ET AL. V. ST. JOSEPH HEALTH SYSTEMS, INC., ET AL.
2021-CA-0985-MR 07/08/2022 2022 WL 2541827

Opinion by GOODWINE, PAMELA R.; CLAYTON, C.J. (CONCURS) AND COMBS, J. (CONCURS) William N. Tipton and Joann K. Tipton appeal an order of the Fayette Circuit Court summarily dismissing various civil claims asserted against the above-referenced appellees. Each of the Tiptons' claims sought to hold Leslie Little directly liable for damages and St. Joseph Health Systems, Inc., and CHI National Home Care indirectly liable based on being exposed to and subsequently contracting COVID-19. What the Tiptons asserted against the appellees was an array of what KRS 39A.275 deems "COVID-19 claims." Additionally, the Tiptons argued that KRS 39A.275 is unconstitutional because it is "special legislation" and violates the jural rights doctrine. The Court of Appeals affirmed the trial court, holding that the appellees were entitled to qualified official immunity under KRS 39A.275; that the statute is not "special legislation" and does not violate the jural rights doctrine.

JOI DENISE ROBY, ET AL. V. CHURCHILL DOWNS, INC., ET AL.
2021-CA-0766-MR 08/26/2022 2022 WL 3721719

Opinion by MCNEILL, J. CHRISTOPHER.; CETRULO, J. (CONCURRING OPINION) AND LAMBERT, J. (CONCURS) Appellant Joi Dense Roby (Roby) sustained an animal bite injury from a horse housed at a stable on the backside area of Appellee Churchill Downs' property. Roby was the on-site guest of a horse owner, Appellee Kyle McGinty (McGinty), during the running of the Kentucky Derby. McGinty's horses were training with Appellees, William Bradley and Bradley Racing Stables, LLC (collectively -2- "Bradley"), who owned the offending horse stabled pursuant to a "Stall Agreement" with Churchill Downs. Roby filed a negligence suit against all the aforementioned parties which was dismissed via summary judgment by the Jefferson Circuit Court based on the reasoning that liability was exempted under the Farm Animals Activity Act (FAAA) under KRS 247.402, which limits the liability for injuries arising from farm animal activity. More specifically, the lower court deemed the injury to have occurred during the "stabling of horses" which was included under the protections of the FAAA. Upon appeal, the Court of Appeals reversed and remanded the lower court's order citing the precedent in Keeneland Association, Inc. v. Prather, 627 S.W.3d 878 (Ky. 2021) which had not been rendered at the time the lower court issued its judgment. The Court reasoned that the FAAA did not extend to the Appellees because the injury in question was sustained during "horse racing activities" as defined by the law and was beyond the scope of protection. The Court noted three underlying factors for support citing that the injury: 1) occurred on Derby Day; 2) by a horse located on Churchill Downs property; 3) which was involved with the activities. The Court also ruled under a premises liability analysis that Churchill Downs owed Roby a duty of reasonable care citing its guest system of entry in place at the backside of the property and her presence as a guest of McGinty. The lower court was further instructed on remand to require Bradley's duty of care to be determined under ordinary negligence principles.