

**Kentucky Supreme Court**  
**Cases of Note**  
**July-August, 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 July**

**TORTS**

**Primal Vantage Company, Inc. v. Kevin O’Bryan, et al.**

**AND**

**Kevin O’Bryan v. Primal Vantage Company, Inc., et al.**

**AND**

**Sante’ O’Bryan v. Primal Vantage Company, Inc., et al.**

**[2020-SC-0247-DG](#)**

**[2021-SC-0064-DG](#)**

**[2021-SC-0065-DG](#) August 18, 2022**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Civil appeal.

Discretionary review granted. In this products liability case, Primal Vantage appealed from a decision of the Court of Appeals affirming the trial court’s judgment that awarded substantial damages to Kevin O’Bryan and Santé O’Bryan.

On discretionary review, the Supreme Court affirmed the Court of Appeals’ holding regarding the jury instructions on the failure-to-warn claims and the apportionment of fault to the Martins—the landowners where the accident occurred. The Supreme Court also affirmed the trial court’s directed verdict to Defendants on the design defect claims but reversed the holding of the Court of Appeals in all other respects as to Primal Vantage. Accordingly, the trial court’s judgment was reversed, and the action was remanded to the trial court for a new trial.

First, the Court concluded that the trial court erred by abandoning its role as evidentiary gatekeeper and allowing the jury to hear substantial evidence regarding other accidents and injuries involving ladderstands that the trial court concluded were inadmissible at the end of trial. Still, the Court clarified that trial courts enjoy broad discretion in making evidentiary determinations and there is no exact chronological procedure mandating when trial courts must make evidentiary determinations.

Second, the Supreme Court concluded that the trial court’s jury instructions regarding failure to warn were not erroneous. The Court explained that since negligence and strict liability are distinct, yet closely related, legal concepts, it was not error for the trial court to provide separate instructions for recovery under each theory.

Third, the Court concluded that the lower courts correctly concluded that fault could not be apportioned to the Martins, the owners of the land and ladderstand at issue under KRS 150.645(1). KRS 150.645(1) provides that landowners—like the Martins— who give permission for others to hunt on their land owe no duty of care to keep the premises safe.

Fourth, the Court affirmed the trial court's directed verdict in favor of Primal Vantage on plaintiff's design defect claims because it was not clearly erroneous. Finally, the Court declined to consider assignments of error regarding Santé O'Bryan's loss of consortium claims and Primal Vantage's arguments regarding allegedly improper references to China and Chinese locations at trial. The Court acknowledged that it consistently considers moot issues that are likely to recur upon retrial. But the Court explained that consideration of those moot issues was inappropriate because it was not likely those issues would recur since recurrence of those issues was dependent upon proof to be presented upon retrial.

**Dolores Zepeda v. Central Motors, Inc.**

**2021-SC-0204-DG August 18, 2022**

Opinion of the Court by Justice Conley. Minton, C.J.; Conley, Keller, Lambert, Nickell and VanMeter, JJ., sitting. All concur. Hughes, J., not sitting. In this case, the Court of Appeals affirmed the summary judgment of the trial court. The Court of Appeals agreed with the lower court that Central Motors, Inc. had substantially complied with all the requirements of KRS 186A.220 and had delivered possession of the vehicle. Therefore, Central Motors, Inc. was no longer the statutory owner of the vehicle at the time of the accident.

The Supreme Court affirmed the Court of Appeals. It held that Central Motors had substantially complied with KRS 186A.220(1) by giving notice to the county clerk's office of its acquisition of a vehicle when it submitted all the documents necessary to transfer ownership to Zepeda. And that by acting on behalf of the purchaser, Central Motors, Inc. had delivered all the necessary documents to the county clerk prior to the accident. Therefore, Central Motors had substantially complied with all the requirements of KRS 186A.220 and had delivered physical possession to the purchaser. Therefore, Central Motors, Inc. was no longer the statutory owner of the vehicle when it was involved in a fatal car accident.