

Kentucky Court Of Appeals
Cases of Note
[September-October, 2022](#)

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1. Hold down the control (“Ctrl”) key and click on the link.
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TORTS

JEREMY BOTTOMS v. CHARLES SMITH, ET AL.

[2021-CA-1085-MR](#) 09/09/2022 2022 WL 4112397

Opinion by CETRULO, SUSANNE M.; ACREE, J. (CONCURS) AND L. THOMPSON, J. (CONCURS)

This is an appeal from a judgment of the Nelson Circuit Court in favor of an owner of a vehicle that was taken by his unlicensed, underage grandson who then had an accident and caused injuries to a third party. On appeal, the Court upheld the trial court’s summary judgment as there was no evidence that the grandfather knowingly permitted the use of his truck. After considering all the evidence and case law, the trial court strictly construed KRS 189.560 which, the Court found, requires some permission or knowledge before, not after, the unauthorized use of the vehicle to find vicarious liability.

DEFAMATIO CARROL CHEATWOOD v. KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY

[2021-CA-0699-MR](#) 10/21/2022 2022 WL 12121442

Opinion by ACREE, GLENN E.; CLAYTON, C.J. (CONCURS) AND TAYLOR, J. (CONCURS)

Appellant challenged the circuit court’s denial of her loss of consortium claim against Appellee after ruling the claim was excluded by provisions of the policy of insurance. The Court of Appeals affirmed.

The opinion resolves the Court of Appeals’ previous conflicting unpublished opinions and the unpublished Supreme Court order indicating similarly conflicting views, all of which turned on interpretation of the same insurance policy exclusion. The Court of Appeals, relying on other published Kentucky Supreme Court precedent, held that a loss of consortium claim is a consequence of the underlying bodily injury claim (i.e., is a derivative claim) and that, in the context of this insurance contract, coverage for a loss of consortium claim is implied only if the associated bodily injury claim is covered and impliedly excluded if the bodily injury claim is excluded.

DEFAMATION; PERSONAL JURISDICTION

JOHN DOE 1, ET AL. v. ANA VIOLETA NAVARRO FLORES, ET AL.

[2021-CA-0314-MR](#) 09/23/2022 2022 WL 4390880

Opinion by DIXON, DONNA L.; CLAYTON, C.J. (CONCURS) AND COMBS, J. (CONCURS)

The Does were minor Covington Catholic High School students who attended a March for Life Washington, D.C., rally. At the Lincoln Memorial, the students interacted with Black Hebrew Israelites and Native American activists. Many people, offended by students’ behavior, called for

their punishment, shaming, and doxing. The Does sued alleging defamation, intrusion upon seclusion, negligent infliction of emotional distress, and harassment. Defendants moved to dismiss, and the motion was granted. Since all but one defendant was out-of-state and made allegedly defamatory statements outside the state, the trial court dismissed those claims for want of personal jurisdiction. The Court of Appeals held that since *Pierce v. Serafin*, 787 S.W.2d 705, 706 (Ky. App. 1990), Kentucky courts have dismissed the notion that out-of-state defendants commit an “act” in Kentucky by sending tortious communication into the state. The Does further claimed the trial court improperly dismissed their defamation claim against the remaining in-state defendant. The Court first pointed out there is no case law allowing defamation claims to proceed anonymously. It simply defies logic that one could anonymously prove defamation. Even so, the Does’ claim fails to meet first element necessary for defamation because statement must be “about” or “concerning” them, and false—neither of which applies here based on content of statement. The Court held the trial court correctly identified statement as nonactionable “pure opinion.”