

Kentucky Court Of Appeals
Cases of Note
July-August, 2023

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 cases of interest in August.

TORTS

**PAUL WILLIAMS, INDIVIDUALLY, ET AL. v. SCHNEIDER ELECTRIC USA, INC.,
F/K/A SQUARE D, ET AL.**

[2022-CA-0184-MR](#) 7/07/2023 2023 WL 4374514

[2022-CA-0190-MR](#)

Opinion by JONES, ALLISON; COMBS, J. (CONCURS) AND THOMPSON, C.J. (CONCURS) Vickie Williams contracted mesothelioma, which she alleged was the result of her childhood exposure to her father’s dusty work clothing. Williams’s father worked at Schneider Electric (f/k/a Square D) beginning in the late 1960s and continuing until approximately 2003. While at Square D, Williams’s father was allegedly exposed to molding compounds manufactured by Union Carbide which contained asbestos fibers. Roughly one year after filing her complaint, Williams died from the disease, and her personal representative / executor was substituted. After a period of discovery, as well as a prior appeal to the Court of Appeals by Square D which the Supreme Court of Kentucky ruled was improperly interlocutory, the trial court granted summary judgment to the Appellees, ruling that the Appellees owed no duty to Williams as she was a “bystander of a bystander,” and there was no foreseeable risk of harm to her through household exposure to her father’s clothing. In a direct appeal from the trial court’s denial of the Appellees’ motion, the Court of Appeals reversed in part, vacated in part, affirmed in part, and remanded. The Court held that the trial court erred when it granted summary judgment to the Appellees, ruling that the Appellees owed a duty to Williams because the risk of household exposure was foreseeable. Next, the Court considered a ruling of the trial court which excluded certain opinions proffered by one of Williams’s experts, based on a purported late disclosure under Kentucky Rule of Civil Procedure 26.02. The Court reversed this order, as the trial court had not found that the late disclosure prejudiced the Appellees. Without a showing of prejudice, “there is no valid basis to exclude or limit testimony.” *Equitania Ins. Co. v. Slone & Garrett, P.S.C.*, 191 S.W.3d 552, 556 (Ky. 2006). Finally, the Court considered Square D’s cross-appeal in 2022-CA-0190-MR. Square D asserted that the trial court had incorrectly determined that worker’s compensation exclusivity did not apply. Williams’s original complaint asserted she was also exposed to asbestos when she worked at Square D herself one summer as a teenager. Nonetheless, the trial court’s order determined that there was no reason to grant summary judgment on the basis of workers’ compensation exclusivity because there was no proof that Williams was exposed to asbestos during her brief employment. The Court affirmed the trial court on this point, noting that the medical and expert proof obtained during discovery attributed her asbestos exposure to her household exposure to her father’s clothing and not to her employment at Square D. The Court then remanded this case to the trial court for further proceedings.