

Kentucky Court of Appeals
Cases of Note
May-June, 2009

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1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

INSURANCE

Franklin v. Safe Auto Insurance Company

2008-CA-000615 05/01/2009 2009 WL 1160357

Opinion by Judge Wine; Judges Dixon and Keller concurred. The Court reversed and remanded a summary judgment in favor of an insurer, wherein the circuit court found that appellants were not the owners of a vehicle at the time it was involved in an accident. The Court held that the trial court erred by focusing on the fact that the record title was still in the seller’s name at the time of the accident. The Court concluded that the filing of the paperwork was not a prerequisite to transfer of title between the individual seller and the individual buyer. Rather, title to the vehicle transferred upon the seller’s and buyer’s completion of the transfer of title and odometer statement on the certificate of title and delivery of the completed form to the buyer. The Court further held that completion of a vehicle transaction record (VTR) was not necessary because the certificate of title was issued after February 2000, and thus met the statutory requirements for conveyance under KRS 186A.215. Therefore, appellants were the owners of the vehicle for purposes of MVRA and coverage under the insurance policy. The Court also held that any other irregularities in the transaction were not material to the motion for summary judgment. The Court declined to consider the insurer’s argument regarding proof of damages, as the only issue before the trial court was whether appellants were owners and the dispute over the amount and apportionment of damages was outside the scope of the appeal.

TORTS

Bentley v. Trinity Christian Academy

2008-CA-000574 05/29/2009 2009 WL 1491351

Opinion by Judge Dixon; Judge Moore and Senior Judge Knopf concurred. The Court affirmed an order of the circuit court granting summary judgment in favor of the appellee private school on appellant’s claims for denial of due process, breach of contract, libel and slander, and invasion of privacy related to the expulsion of a student from the school. The Court first held that the school’s student handbook did not guarantee the same due process protections as provided in public schools and even if it did, because the student was informed of the allegations against her and was given the opportunity to respond and defend her actions, her due process protections were not violated. The Court then held that the school did not breach the contract by failing to follow the five-step disciplinary process or failing to document prior discipline issues in writing as the school retained the discretion to expel or suspend a student who committed a major offense, even if it was a first offense. Further, the student failed to avail herself of the required remedy of following the proper grievance procedure for appeal to the school board. The Court next held that appellant failed to present sufficient evidence of libel and slander. The headmaster’s interviews with students to question them as to the details of what they had heard or observed of the alleged incidents was not slander when there was no allegation that he divulged information or opinions to the students. Further, emails from the headmaster to the school board following the student’s dismissal were properly characterized as internal reporting

memos and fell under the purview of a qualified privileged communication. The Court finally held that appellant failed to present sufficient evidence to support a claim for invasion of privacy. A letter sent to parents requesting permission to discuss with students their knowledge of the dismissed student did not contain any details of the dismissal and parents were specifically informed that students were not obligated to discuss the matter. The Court rejected appellant's claim that the letter gave unreasonable publicity to the student's private life and that it placed her in a false light. The complaint, which was public record, contained more detailed information than that included in the letter, the student published information on her MySpace page and the mother discussed the dismissal with a number of other parents. Therefore, neither had an expectation of privacy.

Morgan v. Bird

[2007-CA-001630](#) 05/29/2009 2009 WL 1491301

Opinion by Judge Lambert; Judges Moore and VanMeter concurred. The Court affirmed an order of the circuit court dismissing appellants' claims brought against a neighbor, a City, members of the city council and a police officer. The Court held that the trial court properly dismissed the claim for failure to state a claim for which relief could be granted, as appellants failed to show that the neighbor acted in bad faith when she reported to the police her suspicion that appellants' toddler son was drinking beer. Therefore, the neighbor was entitled to immunity under KRS 620.030. Further, the one disagreement related to the events did not suggest a level of malice or bad intent required to prove the neighbor acted in bad faith. The Court further held that it did not matter that the neighbor reported the suspected neglect to her son, a member of a local law enforcement agency, as allowed by the statute. The Court then held that because there was no bad faith by the neighbor and the officer properly followed the guidelines outlined in the statute for reporting the claim to the Cabinet for Health and Family Services, the claims against the city and city council members for failure to properly supervise and/or train the officer were properly dismissed. The Court further held that the trial court did not err in granting summary judgment on the claim that the officer illegally searched appellants' home. The officer merely followed the Cabinet worker through the home as she conducted her investigation, appellants did not object to the officer entering their home, no property was seized and the officer's observations had no weight on the Cabinet worker's decision to place the child with a relative pending drug tests of the parents and a live-in friend. The Court finally held that appellants' claim of intentional infliction of emotional distress by the police officer was without merit.

Bailey v. MCM Business Services, Inc.

[2007-CA-001619](#) 06/05/2009 2009 WL 1562848 Rehearing Pending

Opinion by Judge Lambert; Judge Taylor and Senior Judge Graves concurred. The Court affirmed a judgment of the circuit court entered pursuant to a jury verdict in favor of appellees on appellant's claims related to an automobile accident. The Court first held that the issue of whether it was error to instruct the jury on the doctrine of sudden emergency was properly preserved by the trial court's renewal of appellant's motion for directed verdict at the close of all the evidence and by appellant's motion for JNOV following the jury verdict. The Court then followed the holding in *Regenstrief v. Phelps*, 142 S.W.3d 1 (Ky. 2004), and held that the trial court did not err in instructing the jury on the sudden emergency doctrine based on testimony that the driver tried to brake but could not, that there were no skid marks indicating the brakes activated, and that the driver swerved into another lane, which was indicative of encountering a sudden emergency. The Court finally held that the trial court did not err in excluding the report of a doctor who examined appellant and died several days later as there was no hearsay exception applicable to the report.