

Kentucky Court of Appeals
Cases of Note
May-June, 2012

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TORTS

Allgeier v. MV Transportation, Inc.

2010-CA-001907 05/11/2012 2012 WL 1649089

Opinion by Judge Lambert; Judges Clayton and Dixon concurred. On direct appeal, the Court reversed and remanded a summary judgment in the appellee paratransit bus service’s favor on appellant’s claims for gross negligence brought after appellant was injured when she was dropped from her wheelchair while exiting a paratransit bus. On cross-appeal, the Court affirmed a judgment entered pursuant to a jury verdict in favor of appellant on her claims for negligent hiring, retention, training and supervision of a bus driver and for vicarious liability against the bus service. In the direct appeal, the Court held that trial court improperly granted summary judgment on the gross negligence claim. Appellant presented clear and convincing evidence that the bus service ratified, authorized or anticipated the conduct of the bus driver. Therefore, a trial for punitive damages was warranted. On the bus service’s cross-appeal, the Court first held that the bus service properly preserved the issue of whether appellant’s negligent hiring claims were improperly submitted to the jury. Because its motion for summary judgment was based on a legal issue and there were not any contested issues of material fact, the motion was sufficient for review. Further, the bus service also preserved the argument by moving for a directed verdict at the close of its evidence. However, the Court rejected the bus service’s argument that because it admitted respondeat superior liability, it was entitled to summary judgment on the claims. The Court held that there was a distinction between the vicarious liability of the employer and the actual liability of the employer and therefore, the admission to vicarious liability did not preclude appellant pursuing her claims for negligent hiring, retention, supervision or training. The Court next held that the trial court did not err by admitting evidence of the bus driver’s prior history of alcoholism. While somewhat prejudicial, the evidence was relevant to appellant’s negligent hiring claims. The Court next held that the trial court did not err by admitting evidence of a subsequent accident on another paratransit bus. The evidence was relevant to support appellant’s claims of negligent training and supervision. The Court next held that the trial court did not err in admitting evidence of the bus service’s contract to provide services. While the issue was preserved for review, the brief mention of the contract was at most, harmless error. Further, it showed that the bus service had an incentive not to conduct thorough investigations and to not report safety violations and thus, was directly related to its credibility regarding whether it conducted a thorough investigation of the accident. The Court next held that the jury instructions were not improper with respect to the duty of care and the scope of the bus service’s liability for negligent hiring. The instructions were in accord with Kentucky’s bare-bones approach and did not misstate the law.

Ingram Trucking, Inc. v. Allen

2011-CA-000513 05/11/2012 2012 WL 1649095

Opinion by Judge Dixon; Judges Keller and Nickell concurred. The Court affirmed an opinion and order of the circuit court granting summary judgment to appellees and concluding that appellant’s action for damages incurred in a motor vehicle accident was time barred. The Court first held that the trial court correctly concluded that the action was governed by the two-year statute of limitations in KRS 413.125 and not the five-year statute of limitations in KRS 413.120(4) for a trespass against

chattel. The record was devoid of any proof that the collision was intentional, which was required for an action for trespass against chattel. The Court then held that the trial court properly dismissed the action as filed outside the prescribed time limitation. The police report filed in the record was properly considered by the circuit court, the allegations in the petition were insufficient to avoid summary judgment, appellant did not plead facts necessary to establish a trespass to chattel, and the cause of action was nothing more than a property damage claim arising from an automobile accident.

Calhoun v. Provence

[2010-CA-001282](#) 06/22/2012 2012 WL 2360933

Opinion by Judge Stumbo; Judges Combs and Keller concurred. The Court affirmed a judgment of the circuit court reflecting a jury verdict in favor of appellant on her claim to recover damages arising from an automobile accident. On the direct appeal, the Court first held the trial court did not abuse its discretion in bifurcating the proceedings. The court's finding that separate proceedings would be more efficient was alone sufficient to support the determination that bifurcation was warranted. Although an earlier decision on bifurcation would have been preferable, it was not an abuse of the wide discretion of the trial court. The Court next held that the trial court did not err in denying appellants' motion for a directed verdict and a new trial on the issue of causation. Given the totality of the evidence, there was sufficient evidence for a jury to reasonably conclude that appellant's injury resulted from something other than the motor vehicle accident or for no discernable reason at all. The Court then held that the trial court did not err in prohibiting the introduction of the other driver's criminal charging documents and related testimony because they had no probative value. On the cross-appeal, the Court held that the trial court did not err in designating cross-appellant as the primary insured at the time of the accident. In reaching that conclusion, the Court first held that the cross-appellant had a statutory duty to require the purchaser to provide proof of insurance before delivering possession of the vehicle. Prior transactions between the parties were irrelevant and did not relieve cross-appellant from its statutory duty.

Lawrence v. George

[2011-CA-000275](#) 06/29/2012 2012 WL 2470985

Opinion by Judge VanMeter; Judge Dixon and Senior Judge Lambert concurred. The Court affirmed a summary judgment in favor of the appellee parole officer on two estates' wrongful death actions wherein the estates claimed that the parole officer's failure to fulfill his statutory duties resulted in the death of two children. The Court held that the officer properly exercised his discretionary duties in supervising the parolee who killed the children and thus was entitled to qualified official immunity. Therefore, the trial court did not err in granting summary judgment in favor of the officer.

Litsey v. Allen

[2010-CA-001777](#) 06/01/2012 2012 WL 1959562

Opinion by Senior Judge Lambert; Judges Dixon and VanMeter concurred. The Court affirmed a summary judgment dismissing appellant's claims for malpractice and intentional infliction of emotional distress as barred by the one-year statute of limitations in KRS 413.140(1)(e). The Court first held that the trial court correctly determined that appellant's claims were not tolled following her last visit to the doctor. The "continuous course of treatment" doctrine did not apply when appellant did not allege that she was relying upon the doctor to correct the consequences of poor treatment but only that she continued to have her prescription for Xanax renewed. The Court then held that the trial court correctly determined and that appellant's claim for intentional infliction of emotional distress was governed by the specific one-year statute of limitation, KRS 413.140(1)(e), governing claims against medical providers. The Court finally held that appellant did not preserve her claim that the doctor should be estopped from relying on the statute of limitation when she failed to present the argument to the trial court.

Smith v. Grubb

[2011-CA-000223](#) 06/15/2012 2012 WL 2160192

Opinion by Judge Thompson; Judges Lambert and VanMeter concurred. The Court reversed and remanded a judgment of the circuit court awarding appellants damages for past medical expenses, pain and suffering and loss of consortium for injuries the appellant wife received when she fell in the appellee store's parking lot. The Court first held that the trial court erred as a matter of law in finding that the store manager was individually liable for the injuries. Liability against the manager was precluded because she did not have sufficient control or supervision of the premises. The Court next held that the trial court erred in denying the store's motion for a directed verdict based on the open and obvious doctrine. The condition in the parking lot was open and obvious and the limited exception in *Kentucky River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010), did not apply when there was no evidence that the store knew or should have known that an invitee on its premises would blindly walk through its parking lot oblivious to common imperfections.

WORKERS COMPENSATION**Big Lots v. Whitworth**

[2011-CA-002188](#) 05/11/2012 2012 WL 1649042

Opinion by Judge VanMeter; Judges Lambert and Thompson concurred. The Court affirmed an opinion and order of the Workers' Compensation Board dismissing appellant's appeal from an order granting a worker's motion to reopen her workers' compensation claim. The Court held that the Board correctly determined that the order was interlocutory and therefore, properly dismissed the appeal. The order only determined that the worker established a prima facie showing to warrant a reopening of the claim but did not adjudicate the claim that the worker's condition had worsened nor the claim that the worker was entitled to an increase in benefits.