

Kentucky Court Of Appeals
Cases of Note
May-June, 2013

Note: Case summaries on the Court of Appeals website for May months are contained in a report of published opinions from June 1, 2012 through May 31, 2013. This report has been prepared from that document, by reviewing the COA [Minutes](#) for published opinions in each of the relevant areas for May, and from the regular case summaries for June.

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”.

TORTS

Warren v. Winkle

[2012-CA-000366-MR](#) 5/24/2013

Opinion by Judge Thompson; Judges Maze and Stumbo concurred. The Court of Appeals reversed and remanded the circuit court’s entry of summary judgment in favor of the landlords in a tenant’s personal injury action. The action was initiated as a result of injuries the tenant allegedly sustained when the ceiling in an apartment she rented from the landlords collapsed. The Court held that while a landlord is generally not liable for injuries to the tenant or her property because of defects in the leased premises in the absence of a contract or warranty as to the condition or repair thereof, because the landlords retained exclusive supervision and control of the roof and the area between it and the tenant’s apartment unit, they could be liable for injuries to the tenant caused when the ceiling collapsed in her apartment. However, the Court emphasized that the duty is not absolute and the landlords must have had actual or constructive knowledge of a defective and dangerous condition.

Carberry v. Golden Hawk Transp. Co.

[2011-CA-000269](#) 06/21/2013

Opinion by Judge Nickell; Judges Lambert and Taylor concurred.

The Court of Appeals affirmed the entry of summary judgment in an action where the appellant - an assault victim who was assaulted by a long-haul trucker in a motel parking lot - sought damages against appellee, the trucker’s employer, for negligent hiring and retention and negligent training and supervision. Using appellee’s tractor-trailer, the trucker had detoured to drive his girlfriend to meet appellant, her ex-husband, in a motel parking lot. Following a dispute, the trucker assaulted appellant and caused him significant head injuries. In affirming the entry of summary judgment, the Court determined that appellant had not established that: (1) the trucker was unfit for his job as a long-haul trucker, and (2) hiring him created an unreasonable risk of harm as required for a claim of negligent hiring and retention. Because neither 49 C.F.R. § 391.21 nor the standard federal job application for a truck driver requires information about an applicant’s criminal history, appellant’s claim that appellee negligently investigated the trucker before hiring him was unfounded. Moreover, the trucker’s alleged failure to list two recent employers was not attributable to appellee because the trucker certified that he had submitted a truthful application. Furthermore, because the assault occurred unbeknownst to appellee, without its approval or authorization, and not in furtherance of its business, appellee could not have foreseen that the trucker would assault appellant where appellee did nothing to place the trucker in proximity to appellant, especially where the trucker’s on-the-job

conduct and performance gave no indication that the assault was imminent or even possible. Finally, the Court held that summary judgment was not entered prematurely where the facts of the assault were undisputed and no amount of discovery would change the fact that the assault did not occur in the course and scope of the trucker's employment.

Lewis v. Faulkner Real Estate Corp.

[2009-CA-001224](#) 06/14/2013

Opinion by Judge Clayton; Judges Taylor and Thompson concurred.

On remand from the Kentucky Supreme Court, the Court of Appeals affirmed the circuit court's determination that appellee was not liable in negligence for foot injuries sustained by a pedestrian when he stepped in a hole next to a sidewalk on appellee's property and fell. Citing to *Kentucky River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010), the Court determined that there were no genuine issues of material fact and that appellee was entitled to summary judgment as a matter of law. The record supported the circuit court's conclusion that the hole next to the sidewalk in question was "open and obvious," that the pedestrian would have seen it if he had been looking, and that appellee had no reason to anticipate the harm from the hole.