Kentucky Supreme Court
Cases of Note
July-August, 2013

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 Court in July

TORTS

Mildred Abbott, et al. v. Stanley M. Chesley, et al.
2011-SC-000291-DG August 29, 2013
Opinion of the Court by Justice Venters. Minton, C.J., Abramson, Keller, Noble and Scott, JJ., concur. Cunningham, J., not sitting. Questions presented: 1) Whether Appellants were entitled to a partial summary judgment against three attorneys responsible for representing them in an underlying litigation for violating their fiduciary duties; 2) Whether the Court of Appeals properly declined to review the circuit court's denial of summary judgment against another attorney that represented Appellants in the underlying litigation; 3) Whether joint and several liability could be imposed on the three attorneys adjudged liable for damages; 4) Whether the Court of Appeals erred by failing to transfer the case from the Boone Circuit Court to the Fayette Circuit Court; and 5) Whether the trial court erred by deducting undocumented expenses from Appellants' monetary judgment. Held: 1) The trial court correctly granted partial summary judgment against three of the attorneys that represented Appellants in the underlying litigation because they violated their fiduciary duties to Appellants by collectively withholding attorneys' fees from Appellants' settlement in excess of the agreed to percentage provided for in their contingency fee agreements; 2) The Court of Appeals did not err in declining to review the denial of summary judgment against the attorney that secured the settlement for Appellants in the underlying litigation because a denial of a motion for summary judgment is interlocutory and not appealable; 3) The three attorneys adjudged liable for monetary damages may be held jointly and severally liable because they were engaged in a joint enterprise; 4) The Boone Circuit Court did not abuse its discretion by denying Appellants' motion for transfer to the Fayette Circuit Court because after the case was transferred from Fayette Circuit Court to the Boone Circuit Court, the "receiving" judge, pursuant to KRS 452.090, retained adjudicative authority over the case; 5) The deduction of the undocumented expenses from Appellants' monetary judgment was not ripe for summary judgment because questions of fact remain and therefore the trial court improperly included them in the partial summary judgment against the three attorneys adjudged liable for breaching their fiduciary duties.

WORKERS COMP

Jason E. Morris v. Owensboro Grain Co., LLC., et al.
2012-SC-000435-WC August 29, 2013
Opinion of the Court. Minton, C.J., Abramson, Cunningham, Noble, Scott and Venters, J.J., sitting. All concur. Keller, J., not sitting. Morris injured his shoulder when he caught himself falling on a dock owned by his employer, Owensboro Grain. He underwent surgery and received Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 et. seq. ("LHWCA") benefits. Later, Morris filed a claim under Kentucky Workers' Compensation Act.

The ALJ, Workers' Compensation Board, and Court of Appeals all found that pursuant to KRS 342.650(4), Morris was not covered under our workers' compensation scheme. The Supreme Court affirmed. KRS 342.650(4) states that "[a]ny person for who a rule of liability for injury or death is provided by the laws of the United States. . ." is ineligible from being covered by the Kentucky Workers' Compensation Act. LHWCA constitutes a "rule of liability" and since Morris received benefits through the LHWCA he was ineligible for Kentucky benefits. There was also no evidence Owensboro Grain provided Morris voluntary coverage per KRS 342.660.

Jackson Purchase Medical Associates v. Sarah Crossett, Honorable Richard M. Joiner, Administrative Law Judge; and Workers' Compensation Board
2012-SC-000436-WC August 29, 2013

Opinion of the Court. All sitting; all concur. Crossett fell on a sidewalk outside of an office building on her way to her job with Jackson Purchase Medical Associates. The sidewalk was to be maintained by the office's landlord and not JPMA. Despite the fact that JPMA did not have direct control over the maintenance of the sidewalk, the ALJ, Workers' Compensation Board, and Court of Appeals all found that the sidewalk was part of the employer's "operating premises" and therefore Crossett's injury was compensable pursuant to an exception to the going and coming rule. The Supreme Court affirmed finding the facts in this matter to be analogous to those found in *Pierson v. Lexington Public Library*, 987 S.W.2d 316 (Ky. 1999). In *Pierson*, the Court found that an employee's injury which occurred in a parking garage, not owned or maintained by her employer, was compensable because the employer instructed the employee to park there. Since Crossett parked in a location which her employer instructed her to park, and was taking a reasonable path to her office, her injury was also compensable.