

Kentucky Supreme Court
Cases of Note
[November-December, 2013](#)

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TORTS

Dick’s Sporting Goods v. Betty C. Webb

[2011-SC-000518-DG](#) November 21, 2013

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Abramson, Cunningham, Noble, Scott, and Venters, JJ., concur. Scott, J., concurs in result only by separate opinion in which Cunningham, J., joins. Keller, J., not sitting. Betty Webb went to Dick’s Sporting Goods on a rainy day to do some Christmas shopping. As she entered the store, she attempted to avoid a puddle of water that had formed between two mats Dick’s Sporting Goods placed at the entryway, slipped and fell on a tile that appeared to be dry, but was actually wet. The trial court granted summary judgment for Dick’s Sporting Goods because the condition of the floor was open and obvious. The Court of Appeals held summary judgment inappropriate in light of this Court’s recent Kentucky River Medical Center v. McIntosh decision. The Court affirmed the Court of Appeals but on different grounds. The tile that Webb slipped on, according to the Court, was not an open and obvious condition. Webb was not aware that the tile was wet before stepping onto the tile. Rather, the Court, relying on clear precedent, held the question of whether Dick’s Sporting Goods exercised reasonable care was for the jury to decide. In doing so, the Court noted that Dick’s Sporting Goods, like all landowners, is subject to the general duty to exercise ordinary care and maintain its premises in a reasonably safe condition. This duty is an active, affirmative, and positive duty. In conclusion, whether the simple use of mats, without maintaining watch over them or making sure they continued to perform their intended function adequately, was sufficient to satisfy the duty of reasonable care owed by Dick’s Sporting Goods was a question for the jury.

Mickiel Pete, et al. v. Michael Anderson, Jr., et al.

[2011-SC-000692-DG](#) November 21, 2013

Opinion of the Court by Justice Abramson. Minton, C.J.; Keller, and Venters, JJ., concur. Noble, J., concurs in part and dissents in part by separate opinion. Scott, J., concurs in part and dissents in part by separate opinion in which Cunningham, J., joins. Michael Anderson, Jr. and Malik Anderson filed a professional negligence claim against attorney Mickiel Pete and his law firm (“Pete”), arising out of the dismissal of a wrongful death claim brought on behalf of the estate of their deceased father when the Andersons were minors. The trial court granted Pete’s motion for summary judgment on the grounds that Michael, Jr. and Malik lacked standing to sue for professional negligence because they did not share an attorney-client relationship with Pete, who had been retained by their mother. The Court of Appeals reversed, holding that summary judgment was inappropriate because there was a genuine issue of material fact as to the existence and scope of an attorney-client relationship with the sons. That court also held that Pete owed professional duties to Michael, Jr. and Malik, who were statutory beneficiaries of the underlying wrongful death claim. The Supreme Court affirmed the Court of Appeals, holding that the children had standing to bring a malpractice claim as the statutory beneficiaries of the wrongful death claim. The Court further concluded that the pleading in the malpractice action brought by the children was sufficient to raise the issue of Pete’s failure to bring a loss of parental consortium claim on their behalf following their father’s death.

Patricia W. Ballard v. 1400 Willow Council of Co-Owners, Inc. and 1400 Willow Council of Co-Owners, Inc. v. Patricia W. Ballard

[2010-SC-000533-DG](#) November 21, 2013

[2011-SC-000584-DG](#) November 21, 2013

Opinion of the Court by Justice Keller. Minton, C.J.; Cunningham and Venters, JJ., concur. Noble, J., concurs in part and dissents in part by separate opinion in which Scott, J., joins. Abramson, J., not sitting. This appeal involved a dispute between 1400 Willow Council of Co-Owners, Inc. (the Council), a condominium association, and one of its co-owners, Patricia W. Ballard (Ballard), regarding the need to replace and who should bear the cost of replacement of a two-story wall of windows in Ballard's condominium. The Court concluded that the Court of Appeals erred when it determined that Ballard's slander of title claim was governed by the one-year statute of limitations set out in KRS 413.140(1)(d), which governs actions for "libel or slander." The Court determined that, although not specifically mentioned, slander of title claims are governed by the five-year statute of limitations set forth in KRS 413.120(7), which applies to "[a]n action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated."

The Court next addressed whether the filing of a lis pendens is protected by a qualified privilege. The Court determined that filing a lis pendens is privileged but only if the filing was "made in good faith and without actual malice." The jury concluded that the Council knowingly and maliciously made a false statement when it filed a lis pendens against Ballard's condominium, thus negating the Council's entitlement to the privilege. Furthermore, the jury found that the Council's actions disparaged Ballard's title and caused a decrease in her condominium's value and/or the loss of a sale. Because there was sufficient evidence to support the jury's findings, the Court concluded that Ballard's slander of title claim was properly submitted to the jury and affirmed the trial court's judgment on that claim.

Next, the Court addressed whether the trial court erred in denying the Council's motion for a directed verdict on Ballard's breach of fiduciary duty claim. The Court concluded that the fiduciary duty claim should have been dismissed because the Council did not have a fiduciary duty to the individual owners. Furthermore, the Court determined that the Court of Appeals incorrectly relied on KRS 273.215(1) because Ballard only brought suit against the Council and not its Board of Directors. Accordingly, the Court reversed and remanded this matter to the trial court for entry of a judgment dismissing Ballard's fiduciary duty claim.

Wilma Jean Shelton v. Kentucky Easter Seals Society, Inc.

[2011-SC-000554-DG](#) November 21, 2013

Opinion of the Court by Chief Justice Minton. Abramson, Keller, and Noble, JJ., concur. Cunningham, J., dissents by separate opinion in which Scott, J., joins; and Scott, J., dissents by separate opinion in which Cunningham and Venters, JJ., join. Shelton became entangled in wires at her husband's bedside while visiting him at Cardinal Hill Rehabilitation Hospital. As a result of the entanglement, Shelton fell and sustained serious injuries. The trial court granted summary judgment for Cardinal Hill because it found the wires to be an open and obvious condition, absolving Cardinal Hill of any duty of care to Shelton. The Court of Appeals affirmed the trial court, again holding Cardinal Hill owed no duty to Shelton. This Court then rendered our decision in *Kentucky River Medical Center v. McIntosh*, modernizing our open-and-obvious jurisprudence. Accordingly, we remanded the case back to the Court of Appeals for reconsideration in light of our decision in *McIntosh*. Again, the Court of Appeals held that summary judgment for Cardinal Hill was appropriate and Shelton sought discretionary review.

The Court held summary judgment was inappropriately granted and Shelton should have been allowed to present her case to a jury. Noting the facts of the case were undisputed, the Court outlined

the remaining question as whether Cardinal Hill, an invitor, completely satisfied the duty of care it indisputably owed Shelton, an invitee. Advancing its decision in *McIntosh*, the Court held Cardinal Hill undoubtedly owed Shelton the general duty of reasonable care and the condition being open and obvious did not obviate that duty. And the Court held that, because Shelton was an invitee, Cardinal Hill owed the more specific duty to eliminate or warn of unreasonable dangers. In the Court's estimation, the duty analysis does not need to go any farther. Instead, the focus of open-and-obvious cases is the element of breach -- that is, whether a defendant has fulfilled the relevant standard of care. Accordingly, the decision of the Court of Appeals was reversed and the case was remanded to the trial court.

CIVIL PROCEDURE

Coy Turner, Jr. and M&W Milling Co., Inc. v. Billy Andrew, Jr.

[2011-SC-000614-DG](#) November 21, 2013

Opinion of the Court by Justice Abramson. All sitting; all concur. Coy Turner, Jr. and M & W Milling Co., Inc., appealed from a Court of Appeals' decision reversing a judgment granting them a "judgment on the pleadings." The judgment dismissed the underlying action brought by Billy Andrew, Jr., claiming personal property damage and lost business profits resulting from a vehicle collision. The vehicle damaged in the collision was a truck owned by Andrew individually and used in a trucking business operated by the limited liability company "Billy Andrew, Jr. Trucking, LLC." The dismissal of the claim was the consequence of sanctions imposed by the trial court for Andrew's failure to comply with multiple discovery orders. Turner and M & W contended that the Court of Appeals erred (1) by concluding that the claim was properly brought by Andrew in his individual capacity, despite the fact that the trucking company was operated as an LLC; and (2) in reversing the trial court's exclusion of Andrew's damages evidence and the consequential dismissal of his claim. The Supreme Court concluded that the Court of Appeals erred in determining that Andrew was entitled to bring the claim for lost business profits in his own name rather than in the name of the LLC, if in fact the trucking business was conducted by the LLC. The Court further concluded that the discovery sanctions imposed on Andrew, specifically, the exclusion of all evidence relating to Andrew's damages, were the functional equivalent of an order dismissing the claim and, consequently, findings of fact and conclusions of law were required. The case was remanded with directions to consider the appropriate sanctions for Andrew's repeated disregard of discovery orders, which sanctions could again result in dismissal, but must be supported by findings of fact and conclusions of law.

WORKERS' COMP

Saint Joseph Hospital v. Angela Frye, Honorable R. Scott Borders, Administrative Law Judge; and Workers' Compensation Board

[2012-SC-000691-WC](#) December 19, 2013

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Cunningham, Noble, Scott and Venters, JJ., concur. Abramson, J., concurs in result only. Angela Frye suffered a work-related injury on January 3, 2008. The parties litigated her claim related to that injury. The ALJ held a final hearing on April 9, 2009, and he rendered an opinion and award on June 2, 2009. On April 23, 2009, (following the final hearing but before the ALJ rendered his opinion) Frye suffered another work-related injury. She filed her claim for that injury on April 20, 2010. The ALJ dismissed Frye's 2010 claim, finding that Frye's 2008 claim was pending when she suffered her 2010 injury and she was required by KRS 342.270 to join those two claims. The Board reversed the ALJ, holding that there was no mechanism for the ALJ to reopen proof after the final hearing; therefore, a claim is not "pending" after the final hearing. The Court of Appeals affirmed.

The Supreme Court affirmed. In doing so, the Court noted that an ALJ only has 60 days after holding a final hearing to render an opinion. Thus, even if Frye had filed a claim for her 2010 injury the day it occurred and the ALJ had consolidated the two claims, there is no provision for reopening proof after a final hearing, and the parties would not have had time to litigate the 2010 claim before the ALJ was required to render an opinion. The Court concluded that, absent a regulatory framework to deal with this situation, a claim is no longer pending between the time of the final hearing and the ALJ's opinion. However, the Court also held that the preceding does not "extend to claims pending on appeal before the Board, the Court of Appeals," or the Supreme Court. Those appellate bodies have the power to remand a claim to the ALJ for additional proceedings, which contemplates the reopening of proof.