

Kentucky Court Of Appeals
Cases of Note
[March-April, 2014](#)

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1. Hold down the control (“Ctrl”) key and click on the link.
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INSURANCE

Kiphart v. Bays

[2012-CA-002218](#) 03/21/2014 2014 WL 1133435 Rehearing Pending

Opinion by Judge Dixon; Judge Caperton concurred; Judge VanMeter dissented by separate opinion. The Court of Appeals reversed a decision awarding husband a dower interest in the proceeds of his deceased wife’s life insurance policies. The wife, shortly before her death and unbeknownst to her husband, changed the beneficiaries on two policies of life insurance from the husband to a trust established for the parties’ minor child. The trial court determined that such acts were fraudulent inter vivos transfers and declared that the insurance proceeds were personalty of the wife’s estate for the purposes of calculating husband’s statutory share. The Court held that the trial court’s characterization of the life insurance proceeds as personalty ignored the fact that upon an insured’s death, the proceeds are automatically paid to the named beneficiary. Those proceeds do not become part of the decedent’s estate unless the estate is the named beneficiary. Moreover, when the owner of a life insurance policy reserves to himself the power to change beneficiaries, he may do so without permission of any prior designee. A beneficiary, even a spouse, has only an inchoate right to the proceeds of a life insurance policy, subject to being divested at any time during the lifetime of the insured. In dissent, Judge VanMeter contended that the trial court had properly analyzed wife’s actions as a fraud on husband’s statutory share.

Neighborhood Investments, LLC v. Kentucky Farm Bureau Mut. Ins. Co.

[2013-CA-000375](#) 03/28/2014 2014 WL 1260480 Released for Publication

Opinion by Judge Moore; Chief Judge Acree and Judge Jones concurred. Landlord filed a breach of contract and declaratory action against appellee for a determination of whether the terms of an insurance policy it had purchased from appellee covered decontamination expenses occasioned by tenant’s production of methamphetamine on leased premises. In an issue of first impression, the Court of Appeals held that the circuit court correctly granted summary judgment in favor of appellee because the insurance policy in question excluded such coverage. Specifically, the policy excluded losses caused by a dishonest or criminal act committed by “anyone” “entrust[ed]” with “the property for any purpose.” Contrary to appellant’s argument, the Court held that “anyone” was not ambiguous, simply indicated an exclusion drafted in broad terms, and therefore included tenants. Also contrary to appellant’s argument, the Court held that the word “entrust” encompassed a lessor-lessee relationship. The word “entrust” was not defined by the contract at issue, but the plain and ordinary meaning of the word conveyed the idea of the delivery or surrender of possession of property by one to another with a certain confidence regarding the other’s care, use or disposal of the property. The Court held that a lessee-lessor relationship falls under this definition because such a relationship involves delivery and surrendering possession of property and, at minimum, the lessor’s expectation that the lessee will not destroy the property or use it in furtherance of a criminal enterprise. The Court further held that the use of the word “property” encompassed real property (specifically the leased premises

at issue), not simply personal property, because the insurance contract specifically defined the word “property” to include the leased premises.

ARBITRATION

LP Pikeville, LLC v. Wright

[2013-CA-000959](#) 04/04/2014 2014 WL 1345293 DR Pending

Opinion by Judge Maze; Judges Jones and Moore concurred. The guardian of a nursing-home resident brought an action against the nursing home for negligence, medical negligence, corporate negligence, and violations of statutory duties, asserting that the resident was injured while at the nursing home. The circuit court denied the nursing home’s motion to compel arbitration, but the Court of Appeals reversed and remanded upon holding that the guardian had the authority to execute a binding arbitration agreement with the nursing home on behalf of her ward. The Court noted that the scope of the authority granted to a court-appointed guardian is much broader than that of a traditional power of attorney, even one intended to survive disability. KRS 387.590(10) generally authorizes the guardian to enter into contractual relationships on behalf of her ward, and the specific powers granted to a guardian under KRS 387.660 are construed broadly to allow the guardian to make any decision which the ward might make for herself if competent. Accordingly, as a statutorily-appointed guardian has the broadest possible agency relationship to her ward, the guardian has the authority to enter into collateral agreements which may affect the jural rights of the ward.

JUDGMENT

University Medical Center, Inc. v. Beglin

[2012-CA-001208](#) 04/25/2014 2014 WL 1661269

Opinion by Judge Combs; Judge Nickell concurred; Judge Maze concurred via separate opinion. The Court of Appeals affirmed an order of the circuit court denying a motion to reduce the post-judgment interest rate of 12% set forth in KRS 360.040. The Court held that the law-of-the-case doctrine bound the circuit court to its initial decision not to reduce the post-judgment interest rate. The Court also held that the historic drop in interest rates occasioned by United States Federal Reserve Board actions did not render prospective application of the judgment inequitable under the provisions of CR 60.02. Finally, the Court held that the circuit court did not err by concluding that interest began to accrue the day the judgment was originally entered rather than the following day since KRS 360.040 provides that a judgment shall bear interest “annually from its date.”