Kentucky Court Of Appeals
Cases of Note
September-October, 2014

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".

INSURANCE

Grange Property and Cas. Co. v. Tennessee Farmers Mut. Ins. Co.
2013-CA-000228 09/12/2014 445 S.W.3d 51
Opinion by Judge Clayton; Judges Combs and Stumbo concurred. An employee brought a personal injury action arising from an automobile accident that occurred with an uninsured motorist (UM) while the employee was driving a vehicle owned by his employer. The employer's UM insurer cross-claimed against the employee's personal UM insurer, a Tennessee insurer, regarding the priority of UM coverage and seeking judgment based on Kentucky's pro rata law. The circuit court entered judgment in favor of the employee's insurer, and the Court of Appeals affirmed. Applying the modern choice-of-law test set forth in Restatement (Second) of Conflicts of Law § 188, which determines the choice of law based on which state has the most significant relationship with the transaction and the parties, the Court determined that Tennessee law was applicable regarding the priority of UM coverage. The Court then held that the employer's UM coverage provided primary coverage to the injured party and the employee's UM coverage provided secondary coverage. However, the employee's UM coverage was extinguished because under Tennessee law he had collected over $100,000.00 in workers compensation benefits, which negated the payment of secondary insurance.

Hollaway v. Direct General Ins. Co. of Mississippi, Inc.
2013-CA-000928 10/10/2014 2014 WL 5064649 DR Pending
Opinion by Judge Moore; Judges J. Lambert and Maze concurred. A third-party claimant brought a bad faith action against an insurer under the Kentucky Unfair Claims Settlement Practices Act (KUCSPA), alleging that the insurer failed to reasonably evaluate, investigate, and negotiate a settlement of her bodily injury claim following an automobile accident with its insured. The circuit court entered summary judgment in favor of the insurer, and the Court of Appeals affirmed. The Court held that under KRS 304.12-230, an insurer has tort liability for bad faith if, and only if, its liability for paying the claim in question was beyond dispute. Absent that, an insurer has a right to defend the case, without making any settlement offer at all, until appellate review is final. Here, appellant's assertion that appellee's liability for paying her claim was "beyond dispute" depended upon the fact that appellee had settled her property damage claim arising from the accident for $463.42 and had later settled her separate bodily injury claim for $22,500. However, the Court held that under Kentucky law, a settlement is not evidence of legal liability, nor does it qualify as an admission of fault. Aside from that, what remained was a situation in which appellee's legal liability for paying appellant anything at all remained an unresolved question. No evidence of record supported that the accident was responsible for causing appellant's alleged injuries, and, of equal importance, the record did not demonstrate beyond dispute that the insured caused the accident.

TORTS

Readnour v. Gibson
2014-CA-000023 09/19/2014 452 S.W.3d 617
Opinion by Judge Combs; Judge VanMeter concurred; Judge Caperton concurred by separate opinion. A driver brought suit against a second driver and the second driver's passengers following a road rage incident. The suit asserted claims for violations of various criminal statutes, loss of personal liberty, and loss of consortium. The circuit court granted summary judgment in favor of defendants, and the Court of Appeals affirmed. The Court first held that the remedy afforded by KRS 446.070, which provides that a person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, even if a penalty or forfeiture is imposed for the violation, was not available with respect to appellant's negligence per se claim that the second driver and his passengers violated provisions of the Commonwealth's insurance code. The Court then held that appellant failed to allege that he suffered any physical injury as a result of the actions of the second driver and his passengers during the incident, as required to state a negligence per se claim based on their alleged violations of various criminal statutes. Next, the Court held that the actions of the second driver and his passengers during the incident were not the legal cause of whatever loss of personal liberty appellant may have sustained as a result of the criminal charges lodged against him or his alleged loss of consortium. Finally, the Court held that there was no evidence that the second driver or his passengers initiated any physical contact with appellant, as required to support a claim for negligent infliction of emotional distress.

Smith v. Grubb
2011-CA-000223 09/26/2014 2014 WL 4782937 DR Pending
Opinion by Judge Thompson; Judges J. Lambert and VanMeter concurred. The Court of Appeals 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 circuit 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 circuit court erred in denying the store's motion for a directed verdict based on the "open and obvious" doctrine. The condition of the eroded area in the parking lot was open and obvious, and the Court concluded that such a condition is common in a parking lot, did not create an unreasonable risk of injury, and was not a condition the owner could anticipate would not be observed by an invitee because of a foreseeable distraction.

ARBITRATION

Pikeville Medical Center, Inc. v. Bevins
2013-CA-000917 10/24/2014 2014 WL 5420002 DR Pending
Opinion by Judge Caperton; Judges Combs and Dixon concurred. In a medical malpractice action where appellant sought to compel arbitration, the Court of Appeals affirmed the trial court's determination that Grover Bevins, the deceased husband of appellee Doris Bevins, did not have the capacity to enter into a complex arbitration agreement such as the one presented to him upon admission to the hospital, based upon his condition upon admission. The Court held that while Grover may have been oriented and focused enough to respond to the doctor's questions and to participate in the course of his medical treatment, he was not necessarily alert and oriented for the purposes of reviewing and signing a complex contract of the kind presented

to him at the time it was presented. The records indicated that Grover was admitted on transfer for treatment of late stage kidney disease and that he was a very elderly, sick man at the time of admission.

NEGLIGENCE

Klinglesmith v. Estate of Pottinger
2013-CA-001737 09/12/2014 445 S.W.3d 565
Opinion by Judge Stumbo; Judges Clayton and Combs concurred. The Court of Appeals affirmed an order granting summary judgment in favor of the Estate of Reba Pottinger. Appellant was on Ms. Pottinger's front porch when she fell over and injured herself. Ms. Pottinger died sometime thereafter and appellant brought a negligence action against the estate claiming that the poor condition of the porch caused her to fall. The trial court granted summary judgment because appellant did not present evidence that the condition of the porch was the reason she fell. On appeal, appellant argued that the trial court erred in finding that the open and obvious doctrine precluded recovery. She claimed the case of Shelton v. Kentucky Easter Seals Soc., Inc., 413 S.W.3d 901 (Ky. 2013), did not eliminate a landowner's general duty to maintain premises in reasonably safe condition or the duty to warn of or eliminate unreasonably dangerous conditions. The Court discussed the Shelton case, but ultimately affirmed because the trial court granted summary judgment due to appellant's lack of evidence regarding the cause of her fall. During her deposition, appellant testified that she did not observe any defects in the porch and that she did not know why she fell other than to note that she felt an urge or compunction to fall after bending over.