

Kentucky Supreme Court
Cases of Note
March-April, 2014

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TORTS

Ambreen Fraser, M.D. v. Matthew Miller

2012-SC-000829-DG April 17, 2014

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Scott and Venters, JJ., concur. Keller, J., concurs by separate opinion in which Noble, J., joins. In a medical malpractice suit, Plaintiff alleged that Defendant, who was an immediate care doctor, was negligent in administering an anti-inflammatory drug. Plaintiff also claimed that Defendant was negligent in failing to obtain his informed consent before administering the anti-inflammatory drug. As a result, Plaintiff argued that Defendant’s administration of the drug induced renal failure, requiring Plaintiff to undergo a kidney transplant. The jury returned a verdict in favor of Defendant and Plaintiff appealed. The first issue before the Kentucky Supreme Court was whether the trial court erred when it denied Plaintiff’s attempt to recall his expert witness. Plaintiff wanted his expert witness to testify for a second time so that he could answer or rebut a juror’s question which was posed after the expert finished testifying. The Court determined that the expert’s anticipated testimony did not qualify as rebuttal testimony pursuant to Civil Rule 43.02. The Court’s conclusion rested on its findings that the expert’s anticipated testimony did not rebut any evidence brought out by Defendant, and such testimony could have been offered in Plaintiff’s case-in-chief. The second issue on appeal was whether the trial court erred in barring Plaintiff from presenting to the jury his claim of informed consent. The Court declined to address this issue because it was not properly preserved for review.

Joe Marson, et al. v. Sherry Thomason, etc., et al.

2012-SC-000314-DG April 17, 2014

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Scott and Venters, JJ., concur. Cunningham, J., concurs in part and dissents in part by separate opinion. Keller, J., not sitting.

The case arose after a legally blind student fell off a set of bleachers that were not properly extended in a school gymnasium. The issue before the Court was whether two principals and a teacher were entitled to qualified governmental immunity in their individual capacities because the alleged negligence (failing to ensure the bleachers were properly extended, and inadequate supervision) consisted of a fixed, routine duty and were ministerial in nature. On this issue, the Court of Appeals found that neither party was entitled to qualified immunity. The Supreme Court found that the school principals were entitled to qualified immunity, but the teacher was not.

The Supreme Court held that the school principals had qualified immunity because the responsibility to look out student safety is a general rather than a specific duty, and requires an individual act in a discretionary manner by devising school procedures, assigning specific tasks to other employees, and providing general supervision of those employees. By contrast, the Court found that the teacher in this matter was specifically assigned to bus duty and that his job required him to perform specific acts that were not discretionary in nature, and thus he was not entitled to qualified immunity.

Justice Cunningham dissented on the basis that he would find the teacher's duties to be purely discretionary.

ARBITRATION

JPMorgan Chase Bank, N.A. (Successor by merger to Bank One, N.A.) v. Bluegrass Powerboats; and James D. Taylor
[2011-SC-000668-DG](#) March 20, 2014

Opinion of the Court by Justice Noble. Minton, C.J.; Cunningham, Keller, and Venters, JJ., concur. Abramson, J., concurs in result only without separate opinion. Scott, J., not sitting.

Appellant, Taylor, sued Chase Bank, Appellee, after a check for the purchase of Appellant's business was initially credited to his account, and then subsequently returned for insufficient funds. Appellant's account was debited the amount of the check, and as a result Appellant's account was overdrawn.

Chase argued that the suit was subject to an arbitration agreement. The trial court agreed after a hearing on the existence of an arbitration agreement and ordered the case to arbitration. In arbitration, Taylor's claim was dismissed. Then, in light of this Court's ruling in *Ally Cat, LLC v. Chauvin*, Taylor moved the trial court to set aside its previous order compelling arbitration because there had never been any proof of the arbitration agreement. 274 S.W.3d 451 (Ky. 2009). At the same time, Chase filed a motion to confirm the arbitrator's award. The trial court found that its previous ruling had been in error and denied Chase's motion to confirm the arbitrator's award. Chase then took an immediate interlocutory appeal of the order denying its motion to confirm the arbitration order and argued that the trial court was bound to confirm the arbitrator's decision and could not set aside the earlier order compelling arbitration. The Court of Appeals disagreed and affirmed the trial court.

The issue addressed by the Court was whether a trial court has the authority to set aside an earlier order compelling arbitration, and thus void the arbitration, or instead must be compelled to confirm the arbitration order. The Court held that the trial court did not err in finding that there was no arbitration agreement, and that the trial court had the power to correct its prior ruling, albeit late in the case, and there was effectively no pertinent arbitration to review. The Court did not reach any other issues on appeal about the arbitration process, such as whether a dismissal for timeliness is an "award" for purposes of confirmation or vacation of an award. The Court of Appeals' decision affirming the trial court was affirmed.