

Kentucky Supreme Court

Cases of Note

March-[April](#), 2015

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 March

INSURANCE

Bonita Beaumont v. Muluken Zeru

[2013-SC-000489-DG](#) April 2, 2015

Opinion of the Court by Justice Keller. All sitting; all concur. Zeru ran a stop sign and struck the car being driven by Beaumont. Beaumont sought and received PIP benefits from her insurer, Cincinnati Insurance Company. Sometime after the accident, Beaumont's attorney wrote to the Cincinnati Insurance adjuster and asked when the last PIP payment had been made. The adjuster stated that a check had been sent to a medical care provider on September 25, 2009. Beaumont filed her complaint on September 21, 2011. Zeru discovered that the September 25, 2009 check was a replacement check for one that had been issued in March 2009 because the recipient medical care provider had apparently lost the March check. Furthermore, Zeru discovered that Cincinnati Insurance had sent out PIP exhaustion letters to Beaumont's medical care providers in August 2009 stating that Beaumont's benefits had been exhausted. Based on this discovery, Zeru moved to dismiss Beaumont's claim as untimely filed - it was filed more than two years after the exhaustion of PIP benefits in August 2009. The circuit court granted Zeru's motion and the Court of Appeals affirmed, based on its published and unpublished precedent. The Supreme Court reversed. In doing so, the Court first held that a PIP check, like any other check, represents discharge of an obligation. However, the obligation is only suspended by the issuance of the check. It is not discharged until the check has been presented and either certified or honored. In the context of the MVRA, once the check has been certified or honored, the statutory "date of payment" is the date the check was issued. It is not the date of presentment or the date the check was certified or honored. The Court noted that this gives the parties certainty. They can determine when the statute of limitations begins to run by reviewing the PIP obligor's payment log without having to delve into its banking records. The Court then held that the PIP check issued in March 2009, which was never presented, honored, or certified, did not discharge Cincinnati Insurance's obligation, thus it did not represent payment. When Cincinnati Insurance issued the replacement check in September 2009, it did so to discharge the outstanding obligation that it meant to satisfy with the March 2009 check. That obligation was discharged when the September 2009 check was presented and honored. The date of payment was the date the check that discharged the obligation was issued, September 2009, not the date the lost check was issued, because the lost check did not discharge anything.

CIVIL PROCEDURE

Kentucky Farm Bureau Mutual Insurance Company v. Keith Justin Conley, et al.

[2013-SC-000252-DG](#) April 2, 2015

Opinion of the Court by Justice Abramson. Minton, C.J.; Cunningham, Noble, and Venters, JJ., and Special Justice Richard W. Martin and Special Justice David B. Sloan, sitting. All concur. Kentucky

Farm Bureau sought discretionary review of a dismissal of its appeal of a Knott Circuit Court order declaring that a homeowner's insurance policy provided coverage for claims arising from a murder that took place in the insured's home. The Court of Appeals dismissed Kentucky Farm Bureau's appeal as untimely after concluding that a Kentucky Rule of Civil Procedure (CR) 59.05 motion to alter, amend, or vacate the trial court's order was deficient due to a lack of "particularity" and therefore failed to toll the time for filing a notice of appeal. The Supreme Court of Kentucky reversed and remanded, concluding that under the doctrine of substantial compliance, a timely CR 59.05 motion that fails to comply with CR 7.02 is still sufficient to trigger the tolling period for the filing of a notice of appeal.

WORKERS COMPENSATION

Mosen Khani v. Alliance Chiropractic, Honorable Otto D. Wolff, Administrative Law Judge; and Workers' Compensation Board **[2014-SC-000220-WC](#) April 2, 2015**

Opinion of the Court by Justice Keller. All sitting; all concur. Dr. Khani was the sole owner of Alliance Chiropractic. He alleged that he suffered injuries to his upper extremities, neck, low back, left lower extremity, and dental bridge while treating patients on three different dates. The Administrative Law Judge (ALJ) dismissed Dr. Khani's claim finding that Dr. Khani's conditions pre-existed the alleged work injuries. In his opinion, the ALJ stated that he did not consider Dr. Khani to be an expert witness. Dr. Khani appealed arguing that the ALJ erred by 5 dismissing his claim, erred by not addressing his claim to temporary income and medical expense benefits, and erred by stating that he was not treating Dr. Khani as an expert witness. The Workers' Compensation Board affirmed, holding that there was sufficient evidence to support the ALJ's dismissal of Dr. Khani's claim and that Dr. Khani had failed to preserve the expert witness issue. The Court of Appeals affirmed. In doing so, the Court agreed with the Board that there was sufficient evidence to support the ALJ's dismissal of Dr. Khani's claim. Additionally, the Court held that, because the ALJ found that Dr. Khani's testimony was evasive and self-serving, his conclusion that Dr. Khani could not be treated as an expert witness was correct. The Supreme Court agreed with the Board and the Court of Appeals that substantial evidence supported the ALJ's dismissal of Dr. Khani's claim. The Court also held that the ALJ did not err by failing to address Dr. Khani's claim for temporary benefits. In doing so, the Court noted that entitlement to benefits is dependent on a finding of a work-related injury. Thus, once the ALJ found no work-related injury, there was no need to address entitlement to benefits. Regarding the ALJ's failure to treat Dr. Khani as an expert, the Court stated that the question was not whether Dr. Khani was an expert, but whether he gave any expert opinions. The Court noted that the Kentucky Rules of Evidence (KRE) provide for the admissibility of both lay and expert opinions. Lay opinions, to the extent they are admissible, are those that are rationally based on the perceptions of the witness. KRE 701. Expert opinions, on the other hand, are based on scientific, technical, or other specialized knowledge. KRE 702. After reviewing Dr. Khani's testimony, the Court concluded that, to the extent Dr. Khani expressed any opinions, he did so based on his own perceptions, not based on scientific, technical, or other specialized knowledge. Therefore, whether Dr. Khani was an expert witness was essentially irrelevant. Finally, the Court noted that the factors cited by the ALJ and the Court of Appeals for not treating Dr. Khani as an expert are factors regarding the admissibility of expert opinions, not factors regarding the qualifications of an expert.