

**PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
AUGUST 1, 2022 to AUGUST 31, 2022**

I. ELECTION LAW

A. JAMES LUERSEN, IN HIS OFFICIAL CAPACITY AS CAMPBELL COUNTY CLERK, ET AL. V. DAVID FISCHER, ET AL. AND BRIAN PAINTER, ET AL. V. DAVID FISCHER, ET AL.

[2022-CA-0788-EL](#)

08/26/2022

2022 WL 3721742

[2022-CA-0789-EL](#)

Opinion by THOMPSON, KELLY; COMBS, J. (CONCURS) AND LAMBERT, J. (CONCURS)

The appeal arose from an order of the Campbell Circuit Court vacating the results of the 2022 May Republican Primary for Campbell County Commissioner after Appellee primary challenger, David Fischer, filed an election contest petition and petition for injunctive relief challenging Appellant Campbell County Commissioner Brian Painter’s victory. Fischer alleged that Painter violated the state’s anti-electioneering law, KRS 117.235, and provisions of the Corrupt Practices Act, KRS 121.055, by distributing campaign materials and pens at the County Administration Building to poll workers during a training session while early voting was occurring on an above separate floor. Citing *Ellis v. Meeks*, 957 S.W.2d 213 (Ky. 1997), the circuit court found that Painter received a significant statistically larger share of votes cast prior to election day and noted, while impossible to know exactly how many votes were influenced, his actions suggested a potential ripple effect that swayed voters beyond those with whom he had direct interactions. After an in-depth examination of prior case law concerning electioneering, the Court of Appeals reversed the lower court’s ruling citing the high evidentiary burden to vacate an election result. The Court indicated there was no evidence to suggest all the individuals Painter had improper interactions with voted for him or motivated others to vote for him, and the number of all the votes cast on the day in question was not enough to have secured him the number necessary to have won the election. Quoting *Hardin v. Montgomery*, 495 S.W.3d 686, 698 (Ky. 2016), the Court wrote, “Because a statistical anomaly alone does not authorize the courts to disturb results of th[e] election, other evidence of significant irregularities affecting those votes must be established.”

II. TORTS

A. JOI DENISE ROBY, ET AL. V. CHURCHILL DOWNS, INC., ET AL.

[2021-CA-0766-MR](#)

08/26/2022

2022 WL 3721719

Opinion by MCNEILL, J. CHRISTOPHER.; CETRULO, J. (CONCURRING OPINION) AND LAMBERT, J. (CONCURS)

Appellant Joi Dense Roby (Roby) sustained an animal bite injury from a horse housed at a stable on the backside area of Appellee Churchill Downs’ property. Roby was the on-site guest of a horse owner, Appellee Kyle McGinty (McGinty), during the running of the Kentucky Derby. McGinty’s horses were training with Appellees, William Bradley and Bradley Racing Stables, LLC (collectively

“Bradley”), who owned the offending horse stabled pursuant to a “Stall Agreement” with Churchill Downs. Roby filed a negligence suit against all the aforementioned parties which was dismissed via summary judgment by the Jefferson Circuit Court based on the reasoning that liability was exempted under the Farm Animals Activity Act (FAAA) under KRS 247.402, which limits the liability for injuries arising from farm animal activity. More specifically, the lower court deemed the injury to have occurred during the “stabling of horses” which was included under the protections of the FAAA. Upon appeal, the Court of Appeals reversed and remanded the lower court’s order citing the precedent in *Keeneland Association, Inc. v. Prather*, 627 S.W.3d 878 (Ky. 2021) which had not been rendered at the time the lower court issued its judgment. The Court reasoned that the FAAA did not extend to the Appellees because the injury in question was sustained during “horse racing activities” as defined by the law and was beyond the scope of protection. The Court noted three underlying factors for support citing that the injury: 1) occurred on Derby Day; 2) by a horse located on Churchill Downs property; 3) which was involved with the activities. The Court also ruled under a premises liability analysis that Churchill Downs owed Roby a duty of reasonable care citing its guest system of entry in place at the backside of the property and her presence as a guest of McGinty. The lower court was further instructed on remand to require Bradley’s duty of care to be determined under ordinary negligence principles.