

PUBLISHED OPINIONS
KENTUCKY COURT OF APPEALS
NOVEMBER 01, 2020 to NOVEMBER 30, 2020

I. CRIMINAL LAW

A. REGAN LYONS VS COMMONWEALTH OF KENTUCKY

[2019-CA-0952](#) 11/13/2020 2020 WL 6685555 Released for Publication

Opinion by THOMPSON, LARRY E; CLAYTON, C.J. (CONCURS) AND TAYLOR, J. (CONCURS)

The Court of Appeals vacated appellant's conviction for driving under the influence of marijuana. The district court classified a Kentucky State Police Laboratory forensic chemist as an expert with respect to the general effects of THC on a person's ability to drive. The chemist's testimony relied on a position paper written by the KSP lab which summarized a number of other studies regarding the effects of THC on a person. The Court of Appeals held that the position paper was not a published study, available to the public, or based on sufficient data; therefore, it was not a reliable published treatise which could be used as the basis for expert testimony. As the chemist's expert testimony was based solely on this paper, the Court held it was error to find the chemist to be an expert pursuant to KRE 702. The chemist's expert testimony was the only evidence regarding appellant's impairment; therefore, the conviction was vacated.

II. PROPERTY

A. LISA HOGG VS DOROTHY ANN HOGG, ET AL

[2019-CA-1621](#) 11/13/2020 2020 WL 6685338 Rehearing Denied

Opinion by DIXON, DONNA L.; ACREE, J. (CONCURS) AND K. THOMPSON, J. (CONCURS)

Appellant challenged an order determining that her property consisted of 0.4 acres encumbered by a right-of-way easement. The Court of Appeals affirmed. As a matter of first impression, the Court held that holders of a remainder interest in property could encumber their interest with an express easement without the consent and signature of the life estate holder. However, as a remainder interest, the encumbrance would only become effective once the life tenancy expired. The Court also rejected appellant's claim that she had acquired additional land by adverse possession because she failed to establish hostile possession for the required 15-year period.

III. WORKERS' COMPENSATION

A. **BOWLIN GROUP, LLC VS CHRISTINA REBENNACK INDIVIDUALLY, ET AL**

[2018-CA-1494](#) 11/20/2020 2020 WL 6811652 DR Pending

Opinion by THOMPSON, KELLY; GOODWINE, J. (CONCURS) AND TAYLOR, J. (CONCURS)

The widow of a worker fatally struck by an intoxicated driver's vehicle brought an action individually, as personal representative of the worker's estate, and on behalf of her minor children, against the driver and the club that served the driver. The worker's former employer intervened to assert subrogation rights. After the widow settled with the driver and club, the employer requested a credit against its future workers' compensation obligations. The circuit court granted the widow's motion for summary judgment, denying the request. The widow also filed bad faith claims against the club's excess insurance provider, but the circuit court granted the insurer's motion for summary judgment. The Court of Appeals held that the widow's settlement for an amount over twice the lost income claimed was prima facie evidence that some of such settlement was for lost income. However, as a matter of apparent first impression, the Court held that the employer was not entitled to a credit against future workers' compensation obligations from the settlement proceeds because KRS 342.700(1) provides that an employee's entire legal fees offset an employer's subrogation/future credit rights. Here, the widow's legal fees vastly exceeded the employer's obligations. Thus, its general entitlement to credits against its future obligations was "wiped out." The Court further held that summary judgment was premature on the widow's claims of bad faith.