KENTUCKY SUPREME COURT
AUGUST 2021

CRIMINAL LAW:
Commonwealth of Kentucky v. Bobbie Collinsworth
2019-SC-0132-DG **August 26, 2021**

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Conley, Keller, Lambert, and Nickell, JJ., concur. Hughes, J., concurs in result only. The Commonwealth of Kentucky appeals from the Court of Appeals' opinion reversing the trial court's imposition of a consecutive sentence for defendant Collinsworth's Kenton and Campbell County felonies pursuant to KRS 533.060(2) and *Brewer v. Commonwealth*, 922 S.W.2d 380 (Ky. 1996). Collinsworth committed two sets of felonies; the first in Kenton County and the second in Campbell County while she was on probation for the Kenton County offense. Collinsworth argued that because her Kenton County probation was not revoked within ninety days of the Campbell County offenses she was entitled to have the sentences run concurrently pursuant to KRS 533.040(3). The Commonwealth countered, arguing that *Brewer v. Commonwealth* controlled and mandated the imposition of consecutive sentences pursuant to KRS 533.060(2). The Supreme Court held that *Brewer* controlled and vacated the Court of Appeals' opinion. The Supreme Court declined, however, to revisit *Brewer* because the case had become moot when Collinsworth satisfied all her obligations to the Commonwealth. Further, the Supreme Court held that the capable of repetition but evading review exception to mootness did not apply because *Brewer* and KRS 533.060(2) explicitly contemplate felony sentences which are generally lengthy and likely to be litigated by interested parties. Neither did the public interest exception to mootness apply because Collinsworth's case did not present a matter of first impression.

Lindsey Wilson v. Commonwealth of Kentucky
AND
Craig Milner v. Commonwealth of Kentucky
2019-SC-0454-DG
2019-SC-0660-DG **August 26, 2021**

Opinion of the Court by Justice Lambert. All sitting; all concur. . In this consolidated appeal from two separate underlying criminal proceedings, the Kentucky Supreme Court interpreted the definition of "overdose" under Kentucky's Medical Amnesty Statute, KRS 218A.133, as a matter of first impression. The Medical Amnesty Statute offers immunity from prosecution for the crimes of possession of a controlled substance and possession of drug paraphernalia if, *inter alia*, medical assistance with an overdose is sought. The issue in the case was whether the Appellants' respective 911 callers were seeking assistance with an overdose, as that term is defined under the statute. The statutory definition of overdose, in turn, has three components; (1) there must be an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death; (2) the physical condition must reasonably appear to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined; and (3) a layperson would reasonably believe the physical condition requires medical assistance. In this case, the second component—that the physical condition appeared to be the

result of the consumption of a controlled substance—was dispositive. The Court held that when a trial court addresses a motion to dismiss an indictment under the Medical Amnesty Statute, its analysis should be twofold. First, the court should determine the facts and circumstances of the alleged overdose from the viewpoint of the caller. Next, the trial court should determine whether, under the facts and circumstances the caller observed, it was objectively reasonable for the caller to conclude that the individual's condition was the result of the use of a controlled substance. Under the facts before it the Court held that neither Appellant was entitled to immunity from prosecution because it was not objectively reasonable for either caller to suspect a drug overdose, nor did it appear that either caller had the subjective intent of seeking medical assistance for the Appellants.

Michael Hayes v. Commonwealth of Kentucky
2019-SC-0455-MR **August 26, 2021**

Opinion of the Court by Justice Hughes. All sitting; all concur. Criminal Appeal. Michael V. Hayes entered an unconditional guilty plea to murder, robbery in the first degree, and tampering with physical evidence. Entering into a plea agreement with the Commonwealth, Hayes agreed that he was subject to the entire penalty range for capital murder set out in Kentucky Revised Statute (KRS) 532.025(2)(a)(2) and the trial court would have sentencing discretion for the entire range of penalties. At the sentencing hearing, Hays presented a Sentencing Report and a mitigation consultant's report describing reasons he should be afforded mitigation. He requested a sentence of twenty years for the murder, ten years for the robbery, and one year for the tampering with physical evidence, with the sentences to run concurrently. Considering the circumstances of the crime and the mitigation evidence, the trial court sentenced Hayes so that his three concurrent sentences totaled a sentence of life without possibility of parole. Hayes sought review, complaining the trial court did not adequately consider the mitigation offered. *Held*: An appealable sentencing issue does not arise when the trial court, without dispute, acknowledges the sentencing range available, and then, after hearing the evidence offered in mitigation, imposes upon the defendant a punishment within that statutory range. Nevertheless, even if Hayes' complaint survived his express waiver of the right to appeal, the trial court did not abuse its discretion when imposing upon Hayes a sentence of life without possibility of parole.

Tonya Ford v. Commonwealth of Kentucky
2019-SC-0538-DG **August 26, 2021**

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Hughes, Lambert, Nickell, and VanMeter, JJ., concur. Conley, J., concurs in result only. Tonya Ford (Ford) was convicted of the murder of her husband, David Ford (David). Her conviction was affirmed by this Court on direct appeal. She filed a motion with the trial court to vacate the judgment pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42 arguing, among other issues, ineffective assistance of counsel due to her trial counsel's failure to object to erroneous jury instructions. The trial court denied Ford's RCr 11.42 motion. The Court of Appeals affirmed the trial court utilizing a manifest injustice standard of review because Ford's counsel filed a brief with smaller font and margins than those required by the civil rules.

The Supreme Court held that the manifest injustice standard of review is reserved only for errors in appellate briefing related to the statement of preservation. The Court then reviewed Ford's claim of ineffective assistance of counsel related to her trial court's failure to object to erroneous jury instructions under the standard found in *Strickland v. Washington*, 466 U.S. 668 (1984). The Court held that Ford's trial counsel's performance was deficient but that his deficient performance did not prejudice Ford. In doing so, it held that jurors' testimony at Ford's RCr 11.42 hearing regarding why they voted to convict Ford was inadmissible to impeach the verdict. The Court held that its holding on direct appeal that the error in jury instructions did not amount to palpable error was not the law of the case for the RCr 11.42 action.

The Supreme Court affirmed the Court of Appeals for different reasons on Ford's ineffective assistance of counsel claim relating to her trial counsel's failure to object to the erroneous jury instructions. It reversed the Court of Appeals on all other issues and remanded to that court to undertake a review of Ford's remaining claims utilizing the proper standard of review.

Shawn T. Sutton v. Commonwealth of Kentucky
2019-SC-0648-MR **August 26, 2021**

Opinion of the Court by Justice Keller. All sitting; all concur. Shawn Sutton was convicted of first-degree assault, attempted murder, first-degree wanton endangerment, two counts of first-degree burglary, theft by unlawful taking of firearms, theft by unlawful taking of property valued in excess of $500 but less than $10,000, and four misdemeanor offenses after invading the home of his ex-girlfriend. At the end of trial, defense counsel requested that the jury be given a mistake of fact instruction because Sutton did not know whether he had a right to be in his ex-girlfriend's house, which would negate the "knowing" element of the burglary charge. The court denied this request.

The issues before the Supreme Court included whether the trial court erred by (1) not granting a directed verdict on the burglary charge, (2) not providing the jury a mistake of fact instruction on the burglary charge, (3) failing to grant a self-protection instruction, (4) permitting the jury to view an officer's body camera footage, and (5) denying a motion for a mistrial on sentencing. The Supreme Court affirmed the McCracken Circuit Court on all issues. Specifically, the Court also held that because Kentucky is a "bare bones" jury instruction state, a mistake of fact instruction on the burglary charge would have been duplicative of the "knowing" element included in instruction for the crime itself.

Billy Chadwell v. Commonwealth of Kentucky
2020-SC-0201-DG **August 26, 2021**

Opinion of the Court by Justice Nickell. All sitting. Minton, C.J.; Conley, Hughes, Lambert, and VanMeter, JJ., concur. Keller, J., concurs in result only. Chadwell was convicted of two counts of trafficking in a controlled substance in the first degree and being a persistent felony offender in the second degree. He was sentenced to fourteen years' imprisonment and ordered to pay $165 in court costs. The conviction and sentence were affirmed on direct appeal.

On grant of discretionary review, the Supreme Court examined whether the trial court erred in imposing court costs in spite of Chadwell's indigency and whether the order mandating the costs be paid within six months of release from custody violated the requirement that costs be paid within one year of sentencing set forth in KRS 23A.205(3) and KRS 534.020. In affirming, the Supreme Court determined KRS 534.020 was inapplicable and the provisions of KRS 23A.205 controlled. Pursuant to that statute as written at the time Chadwell was sentenced, trial courts were required to impose court costs unless a defendant qualified as a "poor person" as defined in KRS 453.190(2). Here, the trial court did not and was not requested to assess Chadwell's financial status or determine whether he qualified as a "poor person." Differentiating a "poor person" from a "needy person" as defined in KRS 31.100, and noting Chadwell's failure to request a ruling from the trial court, the Court held imposition of court costs was not inconsistent with the facts in the record, and, citing *Spicer v. Commonwealth*, 442 S.W.3d 26 (Ky. 2014), no error—sentencing or otherwise—occurred warranting correction. As the trial court had not erred, the Court found Chadwell's alternative argument regarding the timing of paying his court costs need not be addressed.

FAMILY LAW:
B.B. v. Commonwealth of Kentucky, Cabinet for Health and Family Services, et al.
2020-SC-0488-DGE **August 26, 2021**

Opinion of the Court by Justice Conley. All sitting; all concur. The Kentucky Supreme Court granted discretionary review to determine whether the trial court erred in admitting part of the testimony of the minor child's therapist, which described alleged abuse and named the father as the perpetrator. Secondarily, the Court was asked to review whether the trial court erred in not giving greater weight to the grand jury findings of "no true bill" when they were submitted as evidence at an adjudication hearing. B.B., the Appellant, appealed the Court of Appeals' decision to affirm the trial court's orders arguing the therapist's testimony did not meet hearsay exception KRE 803(4)—the so called "medical treatment" exception. While the Supreme Court did conclude the therapist's testimony identifying B.B. as the child's abuser was harmless error, the Court held the remainder of the therapist's testimony was admissible and the trial court properly relied upon it. Additionally, the Court concluded the trial court did not abuse its discretion in failing to give more weight to B.B.'s "no true bills" during the adjudication hearing. The Supreme Court affirmed the orders of the Court of Appeals and the Franklin Circuit Court.

FARM ANIMALS ACTIVITY ACT:
Keeneland Association, Inc. v. Roy J. Prather, et al.
AND
Sallee Horse Vans, Inc. v. Roy J. Prather, et al.
2020-SC-0067-DG
2020-SC-0075-DG **August 26, 2021**

Opinion of the Court by Justice Hughes. Minton, C.J.; Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. VanMeter, J., not sitting. During the 2016 September Yearling Sale at Keeneland, a horse broke loose from its handler and headed toward pedestrians who were crossing a path between barns. One pedestrian, Roy J. Prather,

fell while attempting to flee and fractured his shoulder. Prather and his wife, Nancy Prather, filed suit in Fayette Circuit Court alleging various negligence claims against Keeneland and Sallee Horse Vans, Inc., the transportation company that agreed with the horse's purchaser to transport it to its destination. Keeneland and Sallee argued that the Prathers' claims were barred by Kentucky Revised Statute (KRS) 247.402, a provision of the Farm Animals Activity Act (FAAA) that limits the liability of farm animal activity sponsors and other persons as to claims for injuries that occur while engaged in farm animal activity. Finding the FAAA applicable, the trial court granted summary judgment in favor of Keeneland and Sallee. On appeal, the Court of Appeals raised a new legal theory *sua sponte* and reversed the trial court's decision. Noting that in a separate statute the legislature recognized the sale of race horses as integral to horse racing activities and that horse racing activities are specifically exempted from the FAAA, the appellate court concluded the trial court erroneously dismissed the Prathers' claims.

Prather qualified as a farm animal activity participant, Keeneland qualified as a farm animal activity sponsor and Sallee was engaged in farm animal activity at the time of Prather's injury. The FAAA generally precludes Prather, who was reasonably warned of the inherent risks of the farm animal activity at Keeneland, from bringing a claim against Keeneland and Sallee. Prather failed to prove that either the defendants were engaged in horse racing activities, which would render the FAAA inapplicable, or that one of the exceptions in KRS 247.402(2) applied. Nothing in the record supported a conclusion that any of the parties were engaged in horse racing activities because the only activities occurring on Keeneland premises were the transport of horses, by hand, to and from the backside of the track, sales arena and transport vans were the horses were loaded and taken off the premises after being purchased. Further, Prather's injury stemmed from an inherent risk of engaging in farm animal activity. While it was unclear what precisely caused the horse to break loose from its handler, the FAAA recognizes the unpredictability of a farm animal as an inherent risk, KRS 247.4015(9)(b). The injury unquestionably stemmed from the horse's behavior in escaping the handler. Holding Keeneland or Sallee liable for Prather's injury would contradict the purpose of the FAAA and the protections afforded to farm animal activity sponsors, professionals and persons for farm animal behavior. The Supreme Court reversed the Court of Appeals and reinstated the order granting summary judgment.

IMMUNITY:

Chris Meinhart, Administrator of the Estate of Demtra Boyd, et al. v. Louisville Metro Government, at al.

2019-SC-0237-DG **August 26, 2021**

Opinion of the Court by Justice Nickell. All sitting; all concur. Louisville Metro Police Department officer engaged in a pursuit of a suspected perpetrator of an assault and purse snatching. Less than two minutes into the pursuit, the suspect ran a traffic light and struck another vehicle, killing a minor passenger and injuring multiple others. Decedent's estate and injured parties filed suit. After several years of discovery and litigation, including an interlocutory appeal to the Court of Appeals, the trial court denied officer's renewed motion for summary judgment on qualified immunity grounds finding his actions were ministerial and material issues of fact

existed. The trial court further denied Louisville Metro Government's motion for summary judgment on sovereign immunity grounds.

On interlocutory appeal, the Court of Appeals expressly rejected the trial court's conclusion officer's actions in initiating and continuing pursuit were ministerial, found them to be discretionary, and held officer was entitled to qualified immunity. The Court of Appeals, also concluding Louisville Metro Government was entitled to sovereign immunity, fully reversed the trial court and remanded for entry of orders of dismissal.

On discretionary review, the Supreme Court affirmed the Court of Appeals. First, it rejected appellants' argument interlocutory appeals are inappropriate in qualified immunity cases and reiterated the fundamental purposes of immunity. Next, after examining the Standard Operating Procedures covering pursuits, the Supreme Court concluded significant, independent professional judgment is necessary in making the determination of whether to initiate, continue, or terminate a pursuit, thereby rendering such decisions discretionary and entitled to qualified immunity. Next, the Supreme Court held appellants had failed to produce evidence establishing the officer acted in bad faith despite the years of discovery and appellants' attempts to piece together snippets of testimony to establish same were unconvincing. Finally, observing the matter had been pending for nearly fourteen years, the Court noted this case illustrated an extreme failure of one of the purposes of immunity which is to free the possessor from the burdens of defending the action.

INJUNCTIVE RELIEF:
Daniel J. Cameron, in his Official Capacity as Attorney General of the Commonwealth of Kentucky v. Andy Beshear, in his Official Capacity as Governor of the Commonwealth of Kentucky
2021-SC-0107-I **August 21, 2021**

Opinion of the Court by Justice VanMeter. All sitting; all concur. Hughes, J., concurs by separate opinion in which Minton, C.J., joins. The Supreme Court granted transfer of this case from the Court of Appeals to review its decision to uphold the temporary injunction issued by the Franklin Circuit Court which enjoined implementation of certain legislation enacted during the 2021 session of the General Assembly (House Bill 1, Senate Bill 1, and Senate Bill 2) which governed Governor Andy Beshear's ability to respond to emergencies as granted in KRS Chapter 39A, pending an adjudication of the constitutionality of that legislation. As a threshold matter, the Supreme Court held that the case presented a justiciable controversy and thus was reviewable. As to the propriety of the issuance of the temporary injunction, the Supreme Court held that the trial court's issuance of injunctive relief was unsupported by sound legal principles because occasioned by an erroneous application of the law. Specifically, the Supreme Court found the Governor failed to meet the requirements set forth in *Maupin v. Stansbury*, 575 S.W.2d 695, 699 (Ky. App. 1978), to obtain a temporary injunction: show a probability of irreparable injury, present a substantial question as to the merits of his Complaint, and persuade the court that the equities balanced in favor of issuance. Accordingly, the Court reversed the trial court's issuance of a temporary injunction and instructed the court, on remand, to dissolve the injunction and proceed with a review of the merits of the Complaint.

Andy Beshear, in his Official Capacity as Governor of the Commonwealth of Kentucky, et al. v. Goodwood Brewing Company, LLC, D/B/A Louisville Taproom, Frankfort Brewpub, and Lexington Brewpub, et al.
2021-SC-0126-I **August 21, 2021**

Opinion of the Court by Justice Keller. All sitting; all concur. Goodwood Brewing Company, LLC, d/b/a Louisville Taproom, Frankfort Brewpub, and Lexington Brewpub; Trindy's, LLC; and Kelmarjo, Inc., d/b/a The Dundee Tavern (collectively referred to as "Goodwood") filed a lawsuit in Scott Circuit Court against Governor Andy Beshear, Cabinet for Health and Family Services Secretary Eric Friedlander, and the Commissioner of the Kentucky Department of Public Health, Dr. Steven Stack (collectively referred to as "the Governor") seeking declaratory relief, a temporary injunction, and a permanent injunction regarding the Governor's orders related to COVID-19. Goodwood also filed a motion for a temporary injunction pursuant to Kentucky Rules of Civil Procedure (CR) 65.04.

Goodwood's CR 65.04 motion for a temporary injunction was heard in the Scott Circuit Court during which the Governor requested a date for an evidentiary hearing where he could present evidence regarding the public interests at stake as well as the likelihood of harm. The trial court denied the Governor's request. After hearing arguments, the Scott Circuit Court entered an opinion and order granting temporary injunctive relief to Goodwood. The circuit court enjoined the Governor from issuing or enforcing new restrictions against "only these specific [plaintiffs]" and enjoined the "Defendants and their designees and agents . . . from enforcing against only the individual Plaintiffs herein at their now-existing locations" a host of specifically enumerated executive orders, administrative regulations, and directives.

The Governor sought relief from the Scott Circuit Court's order in the Court of Appeals pursuant to CR 65.07, and the Supreme Court accepted transfer of the case. The Supreme Court held that evidentiary hearings at which witnesses testify and are cross-examined are the preferred procedure to resolve motions for a temporary injunction. In this case, the Scott Circuit Court abused its discretion in failing to hold an evidentiary hearing, and the Court vacated its order granting a temporary injunction. The Court declined to remand the issue back to the trial court for an appropriate hearing, holding the issues surrounding the temporary injunction were moot, as the specific orders, regulations, and directives the Governor was enjoined from enforcing had been rescinded and there was no practical relief the Court could grant either party.

MEDICAL MALPRACTICE:

University Medical Center, Inc. d/b/a James Graham Brown Cancer Center, et al. v. Reagan Brooke Schwab, et al.
2019-SC-0641-DG **August 21, 2021**

Opinion of the Court by Justice Hughes. All sitting; all concur. Reagan Brooke Shwab was diagnosed with a kidney disease which became severe in 2008, necessitating a kidney transplant. Interested in avoiding the need for lifetime immunosuppressant drugs following the transplant, Brooke consented to participate in a Phase I clinical trial that had as its goal participants achieving tolerance of a transplanted kidney and

avoiding a continuing regimen of immunosuppressant drugs. Shortly after participating in the clinical trial, Brooke developed myelodysplastic syndrome (MDS), a rare form of blood cancer. Brooke and her husband filed suit against the clinical trial's medical providers alleging that her consent to the medical treatment involved in the trial was invalid pursuant to Kentucky Revised Statute (KRS) 304.40-320, the statute that provides the framework for determining when informed consent has been properly given in an action involving medical care. After eight years of discovery, the trial court found that the informed consent in this case complied with Kentucky statutory authority and federal regulations and granted summary judgment to the medical defendants. The Court of Appeals reversed, holding that the Shwabs presented enough evidence to potentially convince a jury that the medical defendants did not give them enough information to reasonably understand the clinical trial or the potential risks.

On discretionary review, the Supreme Court determined that the actions of the medical care providers satisfied KRS 304.40-320. Brooke met with five medical care providers and was informed of the trial's lack of success, substantial risks and potential complications. She also had ample opportunity to review the consent form and ensure that she understood its contents. The Shwabs introduced one expert whose testimony failed to qualify as expert testimony necessary to satisfy KRS 304.40-230(1) because he did not possess all relevant information regarding the Shwabs' discussions with medical providers and instead relied almost entirely on the Shwabs' testimony regarding the informed consent process. KRS 304.40-320(1) requires more than one physician's personal opinion regarding how he believes informed consent should work. Further, the medical defendants adequately informed Brooke of the substantial risks inherent in the clinical trial treatment when evaluated from the standpoint of "a reasonable individual," thus satisfying KRS 304.40-230(2). No testimony established than MDS was a recognized substantial risk of the medical procedures and the Shwabs ultimately did not have a viable informed consent claim under Kentucky law. The Supreme Court reversed the Court of Appeals and remanded the case to the trial court for reinstatement of summary judgment in favor of the medical defendants.

PENSION SPIKING:

City of Villa Hills, Kentucky v. Kentucky Retirement Systems
2019-SC-0434 **August 26, 2021**

Opinion of the Court by Chief Justice Minton. Conley, Hughes, Keller, Lambert and VanMeter, JJ., sitting. All concur. Nickell, J., not sitting. We accepted discretionary review to consider the application of what is known as the pension-spiking statute, Kentucky Revised Statute (KRS) 61.598. KRS accrued $200,000 in actuarial costs against the City of Villa Hills following the retirement of one of its employees. KRS argued that the increases in the employee's compensation over the five years preceding his retirement was "not the direct result of a bona fide promotion or career advancement." KRS then places the burden on the City to pay the added actuarial costs of the retiree's pension benefits. The City raised several objections on appeal: (1) the Retirement Systems applied KRS 61.598 in an improperly retroactive manner to compensation paid to the employee before the effective date of the statute; (2) the burden of proof was improperly placed on the City to prove the 2 existence of a bona fide promotion related to the pay raise; (3) the courts below erroneously concluded the

assessment was supported by substantial evidence that the employee did not experience a bona fide promotion; and (4) that KRS 61.598 is unconstitutional for being arbitrary, overbroad, an ex post facto law, and a law violating the Contracts Clause. We affirmed the Court of Appeals decision that the burden of the extra costs remained with the City, as the employee's promotion as not a direct result of a bona fide promotion.

PROTECTIVE ORDERS:

Jane Smith v. Jane Doe, a minor
AND
Jane Doe, a minor v. Jane Smith
2020-SC-0211-DG
2020-SC-0305-DG **August 21, 2021**

Opinion of the Court by Justice Lambert. All sitting; all concur. A case wherein an interpersonal protective order (IPO) was entered between a minor petitioner and a minor respondent by the general division of the Jefferson District Court. The petitioner was represented by counsel but the respondent was not. The Jefferson Circuit Court affirmed. The Court of Appeals reversed and remanded with orders that the IPO be vacated. The basis for the Court of Appeals' holding was that the general division of district court lacked jurisdiction over the case because the juvenile division of district court has exclusive jurisdiction over cases involving a minor respondent. The Kentucky Supreme Court affirmed the Court of Appeals on different grounds, and remanded with orders that all traces of the IPO be removed from the record.

Preliminarily, the Supreme Court held that the collateral consequences exception to mootness permitted review of the case notwithstanding that the IPO was no longer in effect. It then held that the general division of district court properly exercised jurisdiction over the case, as KRS Chapter 456 grants concurrent jurisdiction to both district court and circuit court over IPO cases and does not differentiate between adult and minor parties for the purposes of jurisdiction. However, an IPO hearing involving a minor petitioner and/or a minor respondent must be made confidential. It next held that, under CR 17.03, an unrepresented minor party to an IPO proceeding must be appointed a guardian *ad litem*. And, because the minor respondent in this case was not represented by counsel, the IPO was erroneously entered. The Court therefore reversed and remanded with orders that all traces of the IPO be removed from the record.

Daniel Smith v. Jason McCoy
2021-SC-0050-DGE **August 21, 2021**

Opinion of the Court by Justice Keller. All sitting; all concur. The Warren Circuit Court issued a domestic violence protective order against Jason McCoy, restraining him from having any contact with the biological daughter of Daniel Smith. The court made oral findings of fact and conclusions of law. It also fully and accurately completed Administrative Office of the Courts (AOC) Form 275.3, finding "[f]or the Petitioner against the Respondent in that it was established, by a preponderance of the evidence, that an act(s) of sexual assault has occurred and may again occur." The trial court also filled in a pre-typed Findings of Fact and Conclusions of Law form that expressly and specifically incorporated its oral findings of fact and conclusions of law.

McCoy appealed to the Court of Appeals. Concluding that the trial court did not make sufficient written factual findings, the Court of Appeals remanded the case to the circuit court for entry of written findings of fact. On discretionary review, the Supreme Court held that the trial court included its essential findings of fact on AOC Form 275.3. The Court saw no need to require busy family courts to transcribe their clear oral findings in protective order cases when they also completely and accurately fill out AOC Form 275.3 and issue a written order explicitly incorporating their clear oral factual findings. Accordingly, the Supreme Court reversed the Court of Appeals and reinstated the domestic violence protective order.

WORKERS COMPENSATION:
Gloria Dowell, Widow of William Bruce Dowell v. Matthews Contracting, et al.
AND
Terry Adams v. Excel Mining, LLC, et al.
2020-SC-0170-WC
2020-SC-0137-WC **August 26, 2021**

Opinion of the Court by Chief Justice Minton. All sitting. Conley, Hughes, Keller, Lambert, and VanMeter, JJ., concur. Nickell, J., concurs by separate opinion. In this matter, the Supreme Court addressed whether the 2018 amendment to Kentucky Revised Statute (KRS) 342.730(4), which terminates workers' compensation income benefits when the benefit-recipient reaches the age of 70 or four years from the date of injury or last injurious exposure, whichever event occurs last, violates the Contracts Clause of the federal and state constitutions. The Court rejected Adams's and Dowell's arguments and instead found that the workers' compensation system is statutory, not contractual, in nature. Accordingly, the Court affirmed the Court of Appeals, holding that those receiving or entitled to claim benefits do not have contractual rights that the statutory amendment could infringe. Justice Nickell concurred to explain that these constitutional arguments were properly preserved and strict compliance with CR 73.03 was met.

Cheryl Cates v. Kroger, et al.
AND
Ronnie Bean v. Collier Electrical Service, et al.
2020-SC-0275-WC
2020-SC-0277-WC **August 26, 2021**

Opinion of the Court by Chief Justice Minton. All sitting. Conley, Hughes, Keller, Lambert, and VanMeter, JJ., concur. Nickell, J., concurring in part and dissenting in part by separate opinion. Plaintiffs, Cates and Bean, brought separate appeals arguing that the 2018 amendment to KRS 342.730(4), which terminates workers' compensation income benefits when the recipient reaches the age of 70 or four years from the date of injury or last injurious exposure, whichever event occurs last, is unconstitutional. The plaintiffs argued the amendment violated the state and federal Equal Protection Clauses because it discriminates based on the income-benefits recipient's age. They also argued the statute is unconstitutional special legislation because it applies only to older income-benefits recipients. Both panels of the Court of Appeals upheld the statute's age classification on equal protection grounds finding that it was rationally related to a legitimate state interest in preventing workers'

compensation income-benefits recipients from receiving duplicate payments in the form of retirement benefits. Likewise, panels rejected the special-legislation challenges to the statute, holding that the statute treated all older income-benefits recipients alike. The Supreme Court affirm the Court of Appeals in both cases and agrees with its reasoning.

Additionally, the Supreme Court, like the Court of Appeals in Bean's case, chose to address Bean's improperly preserved constitutional arguments because he had substantially complied with CR 73.03. Justice Nickell concurred with the majority's holding that the statute is constitutional but dissented in the majority's decision to find Bean had substantially complied with CR 73.03.

WRIT OF PROHIBITION:
Douglas Imhoff, et al. v. Oscar Gayle House, et al.
2020-SC-0530-MR **August 26, 2021**

Opinion of the Court by Justice VanMeter. All sitting; all concur. Opinion of the Court by Justice VanMeter. All sitting, all concur. Appellants Douglas and Patricia Imhoff, Jack and Donna Harris, Margaret Johnson and Vivian Hamilton (collectively referred to as "the Lessors") appeal from the Court of Appeals' order granting Appellee Vinland Energy's petition for a writ of prohibition of the first class, thereby vacating the Clay Circuit Court's denial of Vinland's motion to dismiss the Lessors' claim for breach of contract. The Lessors, Kentucky landowners, entered into leases with Vinland, and oil and gas producer, granting Vinland the right to extract oil and gas from the Lessors' land, in exchange for one-eighth of the market price of all oil and gas taken. The leases are silent with respect to the apportionment of severance taxes. Vinland deducted severance taxes as post-production costs before paying royalties to the Lessors until the issuance of this Court's opinion in *Appalachian Land Co. v. EQT Production Co.*, which held, as a matter of first impression, that in the absence of a specific lease provision apportioning severance taxes, natural gas lessees may not deduct severance taxes or any portion thereof prior to calculating a royalty value. 468 S.W.3d 841, 848 (Ky. 2015). Thereafter, the Lessors filed a breach of contract class action suit in Clay Circuit Court alleging that Vinland impermissibly deducted severance taxes as a post-production cost before paying them royalties. The circuit court denied Vinland's motion to dismiss on grounds that the circuit court lacked subject-matter jurisdiction over the claims because none of the Lessors met the required amount in controversy. The Court of Appeals then granted Vinland's writ of prohibition on the basis that the circuit court lacked subject-matter jurisdiction. The Supreme Court affirmed the appellate court, finding that not one of the Lessors met the $5,000 amount in controversy requirement, prescribed by the legislature, to invoke the circuit court's jurisdiction. The Court rejected the Lessors' insistence the plaintiffs' damages should be aggregated to meet the $5,000 threshold in class action suits. The Supreme Court further rejected the Lessors' argument that class actions suits are matters of equity *per se* regardless of the amount-in-controversy. The Court found that the Lessors presented a clear claim of breach of contract, which is regularly adjudicated in district court when the amount-in-controversy does not exceed $5,000. If the legislature wishes to expand subject-matter jurisdiction, it is within its purview to do so, not the Courts.

ATTORNEY DISCIPLINE:

David Joe Porter v. Kentucky Bar Association

2018-SC-0115-KB **August 26, 2021**

Opinion and Order of the Court. All sitting; all concur. Porter failed to show cause why he should not be suspended from the practice of law for failing to abide by the Supreme Court's August 2018 Opinion and Order, which probated his disciplinary sanction subject to satisfying certain conditions. Specifically, Porter failed to pay any of the $55,613.22 owed to various victims of his professional misconduct, to provide proof of such payments, or to explain adequately why he has not reported having made even a partial payment. Accordingly, the Court granted the KBA's request and suspended Porter from the practice of law for 181 days.

Kentucky Bar Association v. Ryan Richard Stith

2021-SC-0149-KB **August 26, 2021**

Opinion and Order of the Court. All sitting; all concur. Stith was charged by the Inquiry Commission with violating the following Supreme Court Rules: SCR 3.130(1.1) for failing to provide competent representation to four of his immigration clients; SCR 3.130(1.3) for failing to perform the work for which he was hired and for failing to file various documents on or before their court ordered deadlines; SCR 3.130(1.4)(a)(3) for failing to keep his clients informed about the status of their immigration cases; and SCR 3.130(8.1)(b) for failing to respond to the bar complaint against him.

Stith had several communications with the Office of Bar Counsel and acknowledged receipt of the Inquiry Commission's charges. But he never filed an answer and failed to contact KYLAP, despite Bar Counsel urging him to do so.

Because of his failure to respond, the Supreme Court entered an order in October 2020 indefinitely suspending him and the matter proceeded to the Board of Governors as a default case under SCR 3.210. The Board recommended that the Court find Stith guilty on all counts and suspend him for a period of 61 days. The Board additionally recommended that Stith be required to enter into and comply with a KYLAP Monitoring Agreement; replay client fees; attend and successfully complete EPEP; and pay the costs associated with this matter. Upon review of the record, the Court adopted the Board's recommendation and sanctioned Stith accordingly.