

**KENTUCKY SUPREME COURT**  
**JANUARY 2021**

**CIVIL PROCEDURE:**

**Estate of John C. Benton, Jr. by Mary M. Marcum as Executrix v. Tim Thomas Currin, et al.**

**2019-SC-0279-DG**

**January 21, 2021**

Opinion of the Court by Justice VanMeter. All sitting; all concur. The Kentucky Supreme Court granted discretionary review to determine the proper procedure for a successor-in-interest to substitute and revive a case following the death of the original party. Appellant Marcum, as executrix of Benton's estate, appealed the Court of Appeals' ruling that revival could only be accomplished by filing both a motion under KRS 395.278 and CR 25.01. The Supreme Court reversed, finding that while KRS 395.278 operated as the one-year statute of limitations within which a party must revive a case, the proper procedure for revival was fully contemplated in CR 25.01. The Court reasoned that the purpose of revival was to inform all parties, and the trial court, of the original party's death and the successor-in-interest's intention to continue the litigation. Consequently, the Court held that Marcum was only required to file a motion for substitution in accordance with CR 25.01 within the one-year limit set forth in KRS 395.278. The Court remanded the case with instructions to consider the unaddressed issues raised by the parties in the original appeal.

**CRIMINAL LAW:**

**Timothy Hargroves, Jr. v. Commonwealth of Kentucky**

**2019-SC-0181-MR**

**January 21, 2021**

Opinion of the Court by Justice Nickell. All sitting; all concur. Armed with a loaded revolver, Hargroves knocked on the door of Williams' apartment. When Williams opened the door, Hargroves saw his girlfriend, Dixon, and their toddler, sitting on a couch. Williams and Dixon were not romantically involved; Hargroves, Dixon and Williams were good friends. Hargroves quickly fired six shots into the apartment and fled on foot. Williams named Hargroves as the shooter before dying of multiple gunshot wounds. Dixon was shot once in the chest and hospitalized for five days. The child was unharmed. Neither Hargroves nor Dixon testified at trial. Hargroves was convicted of murder, first-degree assault, first-degree wanton endangerment, and possession of marijuana. He was sentenced to a total of forty-five years' imprisonment.

When apprehended, Hargroves admitted shooting Williams. His admission, plus Williams' identification of Hargroves as the shooter, erased any doubt about the culprit's identity. The sole question was why he shot. Hargroves, who clearly recalled events preceding the shooting, claimed alcohol blurred his memory of the actual shooting. A detective asked if he acted in self-defense, but Hargroves said nothing. Less than two hours later, setting the foundation for a self-defense theory, Hargroves spontaneously said he shot Williams because Williams choked him so violently he could barely breathe.

Hargroves, an experienced criminal, spoke freely to officers and initiated dialogue at least once. His comments were captured on body cameras worn by officers. Portions

were played at trial. Hargroves said he intended to shoot Williams, but expressed anger only toward Dixon, including seeing her and their child with another man (not Williams) the previous night.

**Held:** First, instructions on EED and voluntary intoxication were properly denied due to failure of proof. Second, detective's response to Commonwealth inquiry about charging decision was cumulative of trial court's reading of indictment and not palpable error. Hargroves' opening statement had made charging decision relevant by revealing three defenses, including self-defense, and less than two minutes in a four-day trial was devoted to it. Third, prosecutor properly reenacted shooting during case-in-chief, making medical examiner who plotted bullet trajectories subject to cross-examination. Finally, Court rejected defense claim *Miranda* warning given soon after arriving at police station grew stale in less than 2.5 hours. No bright line rule establishes when a *Miranda* warning may become stale, but totality of circumstances must be considered when evaluating potential staleness. Factors include: whether *Miranda* rights were given; accused's age and schooling; conditions and length of detention and interrogation; whether lengthy gap occurred; how and why new conversation was initiated and by whom; change in accused's circumstances; whether all conversations pertained to same charge or set of charges; and, accused's experience with law enforcement and judicial system.

**FAMILY LAW:**

**Shayne Blackaby v. Nancy Barnes**

**2020-SC-0004-DGE**

**January 21, 2021**

Opinion of the Court by Justice VanMeter. All sitting; all concur. The Kentucky Supreme Court granted discretionary review to address the effect of a grandparent visitation petition filed by a paternal grandfather, Appellant Shayne Blackaby, after his son's parental rights lapsed by virtue of his death, and after an adoption by the child's maternal grandmother, Appellee Nancy Barnes, had been finalized. The Shelby Circuit Court dismissed Blackaby's petition for grandparent visitation on grounds that he lost standing to seek formal visitation after the adoption of his grandchild had been finalized. The family court also found that Blackaby did not meet the stepparent exception established in *Hicks v. Enlow*, 764 S.W.2d 68 (Ky. 1989). The Court of Appeals affirmed. The Supreme Court reversed and held that the grandparent visitation statute, KRS 405.021, does not contemplate the situation at hand and that the public policy considerations of the stepparent exception articulated in *Hicks* extend equally to an intra-family grandparent adoption such as this one. The Court remanded the case to the family court with instructions to conduct an evidentiary hearing on whether Blackaby can prove, as required by KRS 405.021, that continued visitation would be in the best interests of the child.

**M.C. v. Commonwealth of Kentucky, Cabinet for Health and Family Services, et al.**

**And**

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**2020-SC-0191-DGE**

**2020-SC-0192-DGE**

**2020-SC-0193-DGE**

**January 21, 2021**

Opinion of the Court by Justice Lambert. All sitting; all concur. The Cabinet filed a dependency, neglect, or abuse (DNA) petition against the biological father of three teenaged children. The Cabinet's sole allegation was that the father did not stop drinking against the Cabinet's wishes and that he refused to attend alcoholics anonymous or an intensive outpatient program. The evidence at the adjudication hearing on the DNA petition was that the father would drink a few beers on the back deck of the home after making and eating dinner with the children. The father never drank to the point of stumbling, falling down, or blacking out. The father did not drink in the morning or during the day and he did not drink in front of the children. The Cabinet worker testified that she had no concerns about the children's attendance or performance in school and that the children were being properly fed, clothed, and otherwise cared for. The Cabinet worker observed nothing in the home that was a threat to the children's health or well-being. The family court found that the children were neglected by their father under Kentucky Revised Statute 600.020(1)(a)2, 3, 4, and 8. In its subsequent disposition order the family court waived reasonable efforts by the Cabinet for reunification and changed the permanency goal for the children to adoption. The Court of Appeals affirmed.

The Supreme Court reversed, holding that the family court abused its discretion by finding that the children were neglected. Though the Court agreed that the father would be well-advised to continue seeking substance use treatment, there was not sufficient evidence to find that the children were neglected as a result of the father's drinking. The children were of an advanced age and the evidence was uncontested that they were being properly cared for by the father.

**PROOF OF MAILING:**

**Pleasant Unions, LLC v. Kentucky Tax Company LLC, et al.**

**2019-SC-0358-DG**

**January 21, 2021**

Opinion of the Court by Justice Hughes. All sitting; all concur. Civil Appeal, Discretionary Review Granted. Kentucky Tax Company, LLC acquired from Taylor County a certificate of delinquency for property owned by Pleasant Unions, LLC in Campbellsville, Kentucky. At the time Kentucky Tax Company bought the certificate of delinquency in 2010, KRS 134.490(1) and (2) required the purchaser to give two

separate notices to the delinquent taxpayer. The statute mandated notice “by first-class mail with proof of mailing” shortly after the third-party purchaser received delivery of the certificate of the delinquency, KRS 134.490(1) (within 50 days), and again before instituting an action to collect the amount due on the certificate, KRS 134.490(2) (at least 45 days). Kentucky Tax Company brought suit to foreclose its lien on the property and to collect the amounts Pleasant Unions owed. Pleasant Unions denied receiving the required notices and opposing summary judgment, challenged Kentucky Tax Company’s compliance with the notice requirements of KRS 134.490. The Court of Appeals affirmed the trial court, finding an affidavit from Kentucky Tax Company’s attorney tendered in support of its summary judgment motion was sufficient proof of mailing. *Held:* The attorney’s affidavit merely stating he caused notices to be sent by first-class mail does not constitute proof of mailing as required by KRS 134.490, and therefore, summary judgment was premature. When notice sent by first-class mail is a person’s right under a Kentucky statute, proof of the means employed to effect such notice must reflect specific actions taken to accomplish the mailing.

**WORKERS COMPENSATION:**

**Ford Motor Company v. Deborah Duckworth, et al.**

**2019-SC-0357-WC**

**January 21, 2021**

Opinion of the Court by Justice Hughes. All sitting; all concur. Deborah Duckworth filed a worker’s compensation claim in June 2013 for a cumulative trauma injury she sustained while working at Ford Motor Company. Duckworth claimed her injury manifested on November 8, 2007 and Ford filed a special answer alleging Duckworth’s claims were barred by the statute of limitations. In its Opinion and Order the ALJ concluded that for cumulative trauma claims, the date a claimant is advised by a physician that she has a work-related condition is the date of injury for statute of limitations purposes, and a claimant is not required to self-diagnose a work-related injury. Further, pursuant to Kentucky Revised Statute (KRS) 342.185(1), if income benefit payments have been made, the claimant must file a claim within two years after the suspension of payments or within two years of the date of the accident, whichever is later. Because the parties stipulated that the last temporary total disability payment was made in August 2011, her claim was filed within two years of that date and thus not time barred. The Workers’ Compensation Board and the Court of Appeals affirmed the ALJ.

The Supreme Court held that the ALJ has authority to determine the manifestation date for cumulative trauma injuries. The parties did not agree on the manifestation date, making that issue subject to further proceedings. The ALJ relied on the medical evidence in the record in identifying the manifestation dates of Duckworth’s injury and did not exceed the scope of his authority. The ALJ properly applied KRS 342.185(1) in determining which occurred later – the manifestation date or the date of the last temporary total disability payment – before correctly concluding that Duckworth filed her claim within two years of the later date. Further, Ford was not deprived of due process because it had adequate notice and ample opportunity to be heard on the statute of limitations issue because “dates of injury” were listed as being at issue in the Benefit Review Conference Order and Ford filed a special answer soon after Duckworth filed her claim to specifically assert a notice and statute of limitations defense.

**WRIT OF MANDAMUS:**

**Charles E. Brooks by Elderserve, Inc., Legal Guardians v. Honorable Tara Hagerty, Jefferson Circuit Court Judge, Family Division 5, et al.**

**2020-SC-0065-MR**

**January 21, 2021**

Opinion of the Court by Justice Keller. All sitting; all concur. Charles E. Brooks, through his guardian and conservator Elderserve, Inc., appealed the Court of Appeals' denial of a petition for a writ of mandamus directing the Jefferson Family Court to grant his motion to amend his petition for an annulment to include a petition for dissolution of marriage from Taylor Toney. The Jefferson Family Court, citing *Johnson v. Johnson*, 170 S.W.2d 889 (Ky. 1943), and its strict prohibition of guardian-initiated divorces, denied Brooks' request to amend his annulment petition to include an action for dissolution. The Court of Appeals denied the writ petition, holding, in part, that the family court had not erred in relying on *Johnson*. Both the Jefferson Family Court and the Court of Appeals, while citing *Johnson* as their authority, requested that the Supreme Court reevaluate the value of *Johnson* as a controlling precedent.

The Supreme Court affirmed the Court of Appeals' denial of the writ petition as the Jefferson Family Court's denial was proper as *Johnson* was good precedent at the time. However, based on changes to Kentucky guardianship statutes since *Johnson*'s rendering, the Court overruled *Johnson* to the extent it prohibited guardian-initiated divorces. Accordingly, the Court held a guardian may seek permission from the district court overseeing guardianship to initiate a dissolution of marriage action on behalf of his ward. The district court must conduct a hearing, and if it determines the action is in the best interests of the ward, the district court shall permit the guardian to file such action in the family court.

**WRONGFUL DEATH:**

**Bryan Keith Simms, Executor of the Estate of John Robert Simms v. Estate of Brandon Michael Blake, et al.**

**2018-SC-0478-DG**

**January 21, 2021**

Opinion of the Court by Justice Lambert. Minton, C.J.; Conley, Hughes, Keller, Lambert, and VanMeter, JJ., sitting. All concur. Nickell, J., not sitting. A probate case wherein the Court, as a matter of first impression, interpreted KRS 391.033 and KRS 411.137 (collectively "Mandy Jo's Law".) The trial court found that Appellant was precluded from recovering any portion of his biological son's wrongful death settlement award because he had "willfully abandoned" his son. On appeal to this court, Appellant argued (1) the trial court's failure to remove Appellees as co-administrator's of his son's estate warranted reversal; (2) the trial court mistakenly applied the preponderance of the evidence standard of proof; (3) the trial court clearly erred in finding that Appellant willfully abandoned his son; and (4) Appellees were equitably estopped from raising Mandy Jo's law.

The Court rejected each of Appellant's arguments, holding: (1) that the failure to remove Appellees as co-administrators was harmless error; (2) that, under Mandy Jo's law, claimants must show that a parent willfully abandoned their child by a preponderance of the evidence; (3) that the trial court did not clearly err in finding that Appellant willfully abandoned his son; and (4) equitable estoppel did not prevent Appellee's from raising Mandy Jo's law as an affirmative defense.

**ATTORNEY DISCIPLINE:****Kentucky Bar Association v. Eric Tuley Weiner****2020-SC-0389-KB****January 21, 2021**

Opinion and Order of the Court. All sitting; all concur. The Inquiry Commission petitioned the Supreme Court to temporarily suspend Weiner, asserting there was probable cause to believe Weiner's current struggle with illicit substance abuse poses a substantial threat of harm to his clients or the public and deprives him of the physical or mental fitness to continue to practice law. In its petition, the Inquiry Commission noted there were four separate disciplinary investigations and a criminal prosecution presently pending against Weiner. Weiner did not respond to the Inquiry Commission's communications and failed to respond to this Court's October 2020 order to show cause why he should not be subject to the requested temporary suspension.

The Court reviewed the uncontested allegations of the Inquiry Commission and agreed there was probable cause to believe Weiner's conduct poses a substantial threat of harm to his clients as required by SCR 3.165(1)(b). The Court further agreed there was a reasonable basis to believe Weiner "is addicted to intoxicants or drugs" and he "does not have the physical or mental fitness to continue to practice law." Consequently, the Court agreed with the Inquiry Commission that, when coupled with SCR 3.165(1)(b), Weiner's license to practice law should be temporarily suspended pending disciplinary proceedings pursuant to SCR 3.165(1).

**Shameka Lynn O'Neil v. Kentucky Bar Association****2020-SC-0425-KB****January 21, 2021**

Opinion and Order of the Court. All sitting; all concur. A client retained O'Neil to represent her in a racial discrimination case. Based on O'Neil's actions (and inactions) in the case, the Inquiry Commission filed a five-count charge against her. The charge alleged O'Neil violated SCR 3.130-1.1 (competence), SCR 3.130-1.3 (diligence), SCR 3.130- 4 1.4(a)(3) (keeping client reasonably informed), SCR 3.130-1.5(a) (unreasonable fee), and SCR 3.130-1.5(b) (communication with client regarding fee).

O'Neil admitted she violated these rules and moved the Supreme Court to enter a negotiated sanction resolving the pending disciplinary proceeding against her by imposing a public reprimand with conditions. The Kentucky Bar Association did not object. After reviewing

**Sebastian Midhun Joy v. Kentucky Bar Association****2020-SC-0537-KB****January 21, 2021**

Opinion and Order of the Court. Minton, C.J.; Hughes, Keller, Lambert, Nickell and VanMeter, JJ., sitting. All concur. Conley, J., not sitting. Joy moved for consensual discipline pursuant to Supreme Court Rule (SCR) 3.480(2) based on a negotiated sanction agreement with the Kentucky Bar Association to resolve the pending disciplinary matters against him in two separate cases. Joy requested a sanction of a 181-day suspension, probated for one year with conditions. The KBA filed a response stating it had no objection to Joy's motion.

Because Joy and the KBA agreed on the sanction, and caselaw supported the proposed resolution in this matter, the Supreme Court held the sanction was the appropriate discipline for Joy's conduct and granted his motion.

**Lindsey Scott v. Kentucky Bar Association**

**2020-SC-0566-KB**

**January 21, 2021**

Opinion and Order of the Court. All sitting; all concur. Based on a negotiated sanction agreement with the Kentucky Bar Association, Scott moved for consensual discipline under Supreme Court Rule (SCR) 3.480(2). Scott, with agreement of the KBA, requested an order imposing a 180-day suspension, probated for two years on condition he commit no new crimes—neither misdemeanors nor felonies; receive no new disciplinary charges; file quarterly proof with the Office of Bar Counsel showing his continued participation in counseling and/or mental health treatment; timely pay KBA membership dues; timely satisfy all continuing legal education requirements; and, pay all costs associated with the investigation and prosecution of this proceeding pursuant to SCR 3.450.

Because Scott and the KBA agreed on the sanction, and caselaw supported the proposed resolution in this matter, The Supreme Court held the sanction to be the appropriate discipline for Scott's conduct and granted his motion