



**Harville**  
LAW OFFICES, PLLC

*The Louisville Accident Lawyer Journal*

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OVER 30 YEARS EXPERIENCE

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- **We are counselors, not just attorneys**
- **We meet with our clients personally - not caseworkers**
- **We want you to understand how the legal system works as it applies to your case**
- **We will keep you informed and guide you every step of the way**

**Why a Newsletter?**

You are receiving this newsletter because you are an existing or past client of our firm, or have contacted us about representation. For this reason, this newsletter is not an "advertisement" under Ky. Supreme Court Rule 3.130-7.02(1)(h). It is our way of staying in touch with people who have had a relationship with our firm. We care about the people we have helped and want you to know your relationship is valuable to us, even after your case is over. We hope you find it entertaining and informative, and would love to hear from you if you enjoy it! Our best,  
Brad Harville  
Dana Skaggs

# I'm Marking My Calendar

Sometimes a case falls in your lap, and you realize you're on to something bigger than just representing your client. What I mean by that is sometimes you have an opportunity to attack a law as being unjust or invalid in order to represent your client to the best of your ability,

Well, I've got one of those cases. I'm going to file it on July 23, the day my client turns 18. That way I don't have to name her mother in the lawsuit as her "next friend."

My client, like many teenage girls, grew up with a love of horses. One day, when she was 15, she and her father were horse-shopping at a horse farm out in the state. As she and her father were about to leave, the farm manager brought out another horse and asked if she would like to ride it. It was a beautiful horse, so of course she said yes. Unfortunately, the handler allowed her to mount the horse while standing off to the side, instead of holding onto the horse to keep it under control. Before she could grab the reins or get both feet in the stirrups, the horse bolted for the barn and she had to hang on for dear life. The horse then ran onto an asphalt driveway, skidded and fell on top of her. She suffered some pretty serious injuries. Generally speaking, under Kentucky law, juries get to decide who is at fault in negligence cases. And that used to be true in negligence cases involving farm animals. That is, until 1996, when the Ken-



tucky legislature passed a law called the "Farm Animal Activities Act" (FAAA). This law declared that "[t]he inherent risks of farm animal activities are deemed to be beyond the reasonable control" of farm animal owners, which would insulate them from any liability. The law also requires farm animal owners to post a warning sign about the inherent risks of injury. If they don't, then the statute states that the FAAA doesn't apply, which means the law that existed before the enactment of the FAAA would apply.

OK, Ky. constitutional law scholars, what's wrong with this picture? If you have read my columns about the Medical Review Panel Act that the Ky. Supreme Court struck down last November, that should give you a clue.

Remember, we're talking about state constitutional law, not the US Constitution and the Bill of Rights. Every state has its own constitution. Kentucky has had 4 constitutions since it became a state in 1792. The current one was passed in 1891, mainly to ratify the 13th, 14th and 15th Amendments of the US Constitution which outlawed slavery. But more pertinent to this

discussion is that it contains perhaps the strongest constraints against the legislature meddling with the legal system of any state in the country. These provisions in Ky.'s constitution have created a legal principle called the "jural rights doctrine," which is unique to Ky. jurisprudence. What this doctrine means is that the state legislature can't alter the common law affecting people's rights and duties as they existed in 1891. Previously the Ky. Supreme Court has applied the "jural rights" doctrine to strike down a statute that redefined the legal standard for imposing punitive damages.

So, were there horses in 1891? Of course! And the law back then sure didn't limit someone's liability for the negligent handling of a horse. For example, a 1903 case held that a livery stable was liable for injuries caused by a "high-spirited, mettlesome" horse that was not "reasonably safe" to pull a buggy.

Curiously, there have been a couple of cases from our appeals courts applying the FAAA. I am surprised that no one has yet made the argument that it is constitutionally invalid. It looks like I get to be the first one!

When lawyers in Kentucky are sworn in by the Ky. Supreme Court, we take an oath to uphold the state constitution. And that's exactly what I'm going to do. I'm taking the FAAA down. You heard it here first. • BDH

## WHEN THINGS DON'T GO YOUR WAY

Wasn't it just last May that I wrote in this column about "One of the Happiest Months of My Life"? Well, the month of May truly was that for my family, with my son Clay graduating from WKU, being on the front page of two newspapers (the *Bowling Green Daily News* and the *Courier-Journal*), and being featured on a news segment broadcast by Bowling Green's ABC affiliate. In case you didn't catch these - and how did you avoid it, I texted and e-mailed these links to everybody! - here are the links (again):

[https://www.bgdailynews.com/news/wku-student-uses-autism-to-connect-with-k--students/article\\_d3ed8556-26b0-5628-a8e0-504973f92f84.html](https://www.bgdailynews.com/news/wku-student-uses-autism-to-connect-with-k--students/article_d3ed8556-26b0-5628-a8e0-504973f92f84.html)

<https://www.courier-journal.com/story/news/education/2019/05/15/louisville-kentucky-student-clay-harville-first-to-graduate-from-wku-autism-program/1188837001/>

<https://www.wku.edu/news/articles/index.php?view=article&articleid=7747>

May was just such a blast for us, even exceeding expectations. The whole month was non-stop fun, topped off by Clay's graduation party during Memorial Day weekend. He had many friends show up from his days at Summit Academy, Trinity High School and WKU.

Then June came. Things sure can turn around quick.

On Tuesday, June 4, we had to take our dog, Casey, to the Blue Pearl Hospital for cataract surgery. Casey was 2 years old when we adopted him as a rescue 11 years ago on June 22, 2008, so now he is around 13. In the last 6 months he began developing a cataract in his right eye which was to the point of causing total vision loss, and his left eye was beginning to develop one, too. We were told that the cataract surgery had a 90-95% success rate in restoring his vision. Casey was otherwise in great shape. The veterinary ophthalmologist also cautioned about the possibility that Casey could develop complications from glaucoma, but she didn't seem particularly concerned about it, and didn't say anything about what to look for if that complication developed.

All seemed fine the first week until the weekend came. That Saturday, Casey didn't seem like himself. We were concerned, but thought he was just feeling the effects of the surgery and all of the eyedrops and medications we were giving him. By Sunday evening, however, it was clear that something was seriously wrong. He was experiencing total loss of vision, bumping into things, and seemed extremely uncomfortable. Even though he had a doctor's appointment the next morning, we rushed him back to the hospital that night and discovered he was experiencing extreme pressure in his optic nerves - glaucoma.



Since then, it's been a roller coaster ride. It has gotten to the point where Casey had to undergo additional surgery to save his eyes and at least some vision in his left eye, but probably not in his right eye. If we delayed any longer, there would be no hope at all.

As I am typing this column on July 2, I am sitting by the pool at the Holiday Inn Express in Fayetteville, Georgia, while Casey is undergoing retinal reattachment surgery in his left eye and laser surgery in both eyes. The ophthalmic surgeon here is one of only a handful of surgeons in the country qualified to do this sort of thing, and he was the closest one to Louisville. Mary drove down Sunday because I had a mediation in Louisville yesterday, and I flew in last night. The surgery takes 3-4 hours and we won't get to see Casey again until tomorrow. Hopefully we can take him home tomorrow evening if all goes well.

So why am I writing this column? Certainly I am feeling sorry for Casey, but not because I am feeling sorry for myself or Mary. The very idea that God has blessed us in bringing us to this place where there is a doctor who offers some hope of preserving some measure of vision and healing for Casey, even a 50-50 chance, can only be viewed as one more miracle that He has performed in our lives, just like all of the other miracles we take for granted that happen for each of us every day. If you take this to mean I am a God-fearing Christian who believes that the risen Jesus Christ is our Lord and Savior then you are spot on. I don't know how people get through tough times without Christian faith, I honestly don't. We've had our share.

But there is one other thing to add. One of my favorite sayings is that if everybody hangs out their dirty laundry, they will go home with their own. What that means is, whenever you are going through a tough time, there is always someone going through something worse, although at times that may be hard to believe. This was brought home to me when I took Casey through the drive-through window at the bank a few days after his surgery. The tellers get a big kick out of him. He knows they will always give him a biscuit, and he stares at the tube machine licking his lips until they send it back. But on that day, the teller who waited on me - a warm, kind woman who has worked there for many years - told me that her dog, a beagle mix, had jumped the invisible fence that morning and was run over and killed. I felt horrible for her, and suddenly our situation with Casey didn't seem so bad. He is still here.

## Current Trends in Personal Injury Law

The Kentucky Supreme Court (KSC) issued a couple of significant opinions in June. I plan on discussing each of these in this month's and next month's newsletter.

The first one is *Estate of Gonzalez v. Johnson*. The facts of this case are that Gonzalez was killed when a criminal suspect crashed head-on into his vehicle during a high speed chase initiated by Scott County Deputy Sheriff Jeremy Johnson. The issue was whether Johnson and the Scott County Sheriff's Dept. could be held liable for Gonzalez's death. The trial court held that they could not be held liable based upon a 1952 case that said a police officer's conduct, as a matter of law, could never

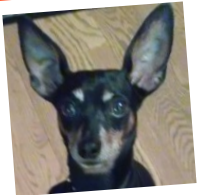
be considered to be the proximate cause of injury or death to a third party struck by a fleeing suspect. This rule became known as the "per se no proximate cause rule." In reviewing this rule, the KSC noted that 67 years had gone by since that 1952 case was decided, and there had been a lot of changes in Kentucky tort law since then, such as the adoption of comparative fault. Statutory changes had also been made to require pursuing officers to exercise due regard for the safety of other persons using the highways. Moreover, the vast majority of states had abandoned the rule. The KSC also cited statistics showing that, on average, 1 person is

killed per day in the US in pursuit-related crashes. Of these, about one-third involved people who were not involved in the pursuit. Therefore, while disclaiming any criticism of the men and women in blue, the KSC held that "[t]he general public has a significant interest in not being subjected to unreasonable risks of injury as the police carry out their duties." The KSC thus overruled the 1952 case and held that an officer can now be the cause-in-fact and legal cause of damages inflicted upon a third party as a result of a negligent pursuit. Therefore, the case was sent back to the circuit court for a trial on the merits.

BRADLEY D. HARVILLE LAW OFFICES PLLC

### 20 Questions about Kentucky No-Fault

The key to understanding how the legal and medical system works in personal injury cases resulting from motor vehicle accidents in Kentucky.



Casey's Ky. Trivia Question:  
About how much money do Kentuckians spend on fireworks every year?

- A. \$750,000
- B. \$1.35 million
- C. \$2.4 million
- D. \$3.2 million

Be the first person to answer correctly by sending an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) and we'll mail you a \$5 Starbucks gift card!

## Stupid-Easy Recipe of the Month

### Easy Lemonade Punch:

Hot weather is here! It's time for BBQs and picnics! To wash it down and cool off, this refreshing drink is a family fave!

### Ingredients:

- 1 cup of Countrytime® lemonade mix (presweetened)
- 3 cups of cold water
- 2 cans of lemon lime soda
- 1 can of chilled pineapple juice

You can also use pink lemonade mix. Mix together in pitcher, add ice, and serve!



A cold refreshing drink on a hot day!

## Favorite Pet of the Month

Duke needs your help! This senior dog is a volunteer favorite, but the kennel environment has him completely stressed. He is healthy and affectionate and would do best in a quiet home.

Retired? Empty nest? Please consider letting Duke be your best friend! Reduced fee available! Visit [www.barktownrescue.org](http://www.barktownrescue.org) and fill out an application.

Dana serves on the Board of Directors at Barktown Rescue.

Brad and his family love pets, too!

If you want to tell us about your pet(s), send an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) with a photo and we'll try to put this in a future issue!



Duke



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**We want to help you secure the best possible outcome out of a difficult situation that you wish had never happened. If you have been injured, our goal is to obtain maximum recovery in the shortest amount of time it takes to get your case resolved.**



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