Harville Law Offices, PLLC
2527 Nelson Miller Pkwy, Suite 102
Louisville, KY 40223
(502) 245-2333
harvillelaw.com

Harville LAW OFFICES, PLLC

The Louisville Accident Lawyer Journal

OCTOBER 2019 • VOLUME 10 OVER 30 YEARS EXPERIENCE

We gladly accept and appreciate your referrals

- **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

Juries and the Burden of Proof

Hands down, one of the dumbest and yet sacrosanct "rules" of Ky. trial practice in personal injury cases is that attorneys should not discuss the burden of proof in front of juries.

Lawyers on both sides often do it anyway. It's one of those offenses that lawyers may overlook the first time or two, so they don't irritate the jury, at least until the other side seems to be scoring some points. That's the time to stand up and gravely state your objection, and enjoy the momentary satisfaction of having your objection sustained.

But I'm sure when that happens, it doesn't make any sense to the jury. Because this rule doesn't make any sense. And there's a lot more harm than good that occurs by not allowing lawyers to talk about the burden of proof.

First of all, how did Ky. come up with such a rule in the first place? The origin of this rule can be traced to an 1896 case, *Ragsdale v. Ezell*, which was even criticized as being misinterpreted in a 1995 Ky. Supreme Court case, but nevertheless gave rise to the dogma that only the judge and the lawyers should have knowledge of the correct legal standard, and juries should only decide facts. In my view, this rule was borne out of a very condescending attitude that juries are too dumb to confuse them by telling them how they are supposed to weigh the evidence.

Since then, Ky. courts have modified the rule by holding that juries should be instructed in cases where a higher standard of proof is required in order to prevail - for example, cases requiring "clear and convincing evidence," such as fraud or termination of parental rights. And, of course, in criminal cases a jury is always instructed that it may convict only if it is convinced "beyond a reasonable doubt."

And yet, we are still stuck with this old saw in personal injury cases, that a jury must not be told that they are supposed to decide the case by a "preponderance" of the evidence, - i.e., more likely than not - and lawyers must not be allowed to explain to the jury what this means. The instructions routinely given to juries ask only if the jury "believes" or "is satisfied" from the evidence.

So why is this a problem? Because nearly every prospective juror in a personal injury cases enters the courtroom with the idea that he or she won't be convinced of anything unless they believe it beyond a reasonable doubt. And if a lawyer isn't allowed to weed them out by asking about their view of the burden of proof, there is no way to disqualify them from serving on the jury. The result is you end up with jurors who follow their own subjective standards in determining what they believe, instead of objectively deciding the evidence based upon what is more likely than not, which is what the law is supposed to require.

Think I am making this up? Well, there is a recent case from Indiana that perfectly illustrates the point I am trying to make. Keep in mind that in Indiana, unlike Ky., they allow the lawyers to talk about the burden of proof with jurors, not that it does them any good.

In *Wallick v. Inman*, decided in August, the lawyer asked the jury panel if they thought it was fair to decide the case by a preponderance of the evidence, i.e. 51-49 in favor of his client, as opposed to a higher standard. Practically every juror on the panel responded that they would have to be convinced by at least 60%, 75%, 80%, 90%, 95%, and even 100% before they would find for the plaintiff.

What did the trial court do about it? Nothing. The trial judge told the lawyer it was his job to instruct the jury, not the lawyer's, and did not disqualify any of the jurors. Not surprisingly, the jury returned a verdict for the defendant. The Indiana Court of Appeals affirmed, finding that the trial court did not abuse its discretion.

I hope this case might find its way to the Indiana Supreme Court and result in a different outcome. It just seems fundamentally unfair that we give lip service to the standard of proof in personal injury cases by a preponderance of the evidence, but allow jurors to accept or reject the evidence however they please. Is it too much to ask our courts to constrain jurors to comply with the legal standard of proof?

Apparently so. • BDH

"I DON'T BELIEVE IN SUING SOMEONE"

During my years of practice, I have encountered people who have had a personal injury claim, but never pursued it. By the time they talked to me, it was too late. This makes no sense to me when we live in a society where our government intentionally requires liability insurance to compensate innocent motorists for bodily injuries as well as employees for workplace injuries.

The purpose behind this legislation is to make society safer by requiring financial accountability on the roadways and in the workplace. If people who have been wrongfully injured in a traffic accident don't pursue a claim, they are giving dangerous drivers a pass and allowing our roadways to remain no less hazardous.

I've been told, "Well, I'm just not the type of person who believes in suing someone." Where did this idea come from?

Well, I believe the answer came to me one day in my Sunday School class. One of my dear friends in that class, a retired banker, came up to me and said, "Brad, what do you think about what it says in Corinthians, where it says people shouldn't sue each other?" He was referring to 1 Corinthians 6:1-8, in which the Apostle Paul is chastising the Christians in Corinth for suing each other in the Greek courts of the day. There are numerous translations of this text, but the one that best captures the idea may be the New Living Translation, which reads: "When one of you has a dispute with another believer, how dare you file a lawsuit and ask a secular court to decide the matter instead of taking it to other believers?"

As an aside, I really didn't appreciate this bit of lawyer "shade" that my friend threw my way that Sunday morning, and I suppose it has rankled me to the point where I decided to write this column. Nor did I respond to my retired banker friend that his ancient counterparts, the moneychangers, were among those whom Jesus angrily threw out of the temple in John 2:13-16. I don't think it would have been very kind or Christian for me to have pointed that out, either.

But I digress. The point I am making is that this idea you shouldn't sue someone has somehow woven itself into the fabric of our Judeo-Christian heritage, and perhaps this passage from the Apostle Paul's letter to the Corinthians, some 2000 years ago, has served as the primary source material for this belief.

Except, like many misperceptions about Biblical texts, that's not what it says. This is just as huge a misperception as what Paul's letter to Timothy says about money. 1 Timothy 6:10 does not say that money is the root of all evil, it says "*the love of* money is the root of all evil."

Likewise, Paul's letter to the Greeks in Corinth does not say that suing someone is wrong *per se*, as my banker friend seems to believe (even though he worked for banks that regularly file foreclosure actions), any more than Paul says that money is evil *per se*.

I also don't believe you can arrive at a more complete understanding of Paul's letter to the Corinthians without knowing who he was and the historical context of his correspondence with the early Christian churches.

Paul on the Road to Damascus

First of all, Paul was a very prominent, highly educated member of ancient Jewish society. So much so that after Jesus's crucifixion and resurrection, Paul actively persecuted early Christians. We read about this in Acts chapters 7 and 8, in which he approved the stoning of Stephen, and set about invading Christian homes and putting men and women in jail. At the height of his anti-Christian crusade, he was struck blind by a light from heaven on the Damascus Road, and was told by Jesus from up above to change his ways. Paul then did a complete about-face and became the leader of the early Christian churches, as well as the greatest and most foundational Christian theologian in history. No big deal? Consider that today, about one-third of the world's population calls themselves Christian, the highest percentage of any religion in existence.

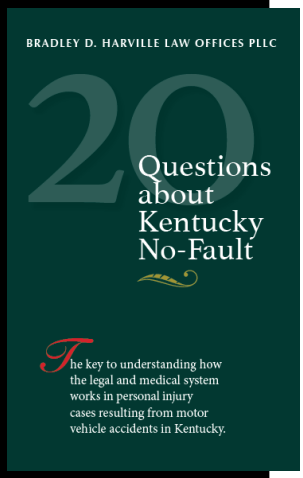
The point here is, - and I don't mean this to sound pejorative - is that Paul was considered a "Jew's Jew." He was extremely knowledgeable about Jewish religious, social and political customs of the day. That's why he commanded a great deal of respect, before and after his conversion. And Jewish culture back in Paul's day required that any legal disputes must be decided among themselves. Asking outsiders to decide a legal dispute was expressly forbidden by Jewish law. You just didn't do that.

That's how we get to Paul's letter to the Greek Christians in Corinth. Barclay's commentary points out that unlike the Jews, the Greeks were a highly litigious people who viewed legal disputes as a form of entertainment. So basically, Paul was trying to encourage the early Christians at Corinth to decide disputes among themselves, in the same way as Jewish society, instead of allowing their disputes to be decided by the secular Greek courts who did not share their ideals or beliefs. The Greeks had probably never heard of the Ten Commandments.

Paul also wrote to the church in Romans, in Chapter 13:1-7, that Christians are supposed to be good citizens. You are supposed to fulfill your civic obligations, pay your taxes, pay your bills, and respect your leaders. If Paul were alive today, he would say you are supposed to carry liability insurance on your car, too, to compensate injured victims of negligence as required by law.

Since Paul's day, we have had 2000 years of evolution behind the development of our current legal system here in the United States. While far from perfect, it is safe to say that comparing our court system today to the Greek courts in Paul's time, is like comparing apples and oranges.

The bottom line is this: Paul never said that if you are victim of injustice, for which there is a legitimate legal remedy, you should just suck it up because you should not sue. That is pure hogwash.



Current Trends in Personal Injury Law

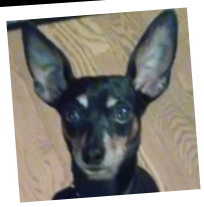
The Ky. Supreme Court ("KSC") recently issued an opinion, *Waugh v. Parker*, holding that the Uniform Residential Landlord and Tenant Act does not apply to a personal injury case involving a landlord and a tenant. The opinion is helpful because many renters have a misguided understanding of what the Act is and what it is designed to do.

The facts of the case were that a tenant claimed injury due to a faulty porch railing. The Act, KRS 383.500 *et seq.*, requires landlords to comply with applicable building and housing codes, which include a provision that such railings must be securely fastened and maintained in good condition. Therefore, the tenant argued that the landlord was liable for her injuries due to the code violation.

However, the problem with this argument is that the Act contains specific remedies for such violations. Generally speaking, under KRS 383.625 and KRS 383.635, a tenant's only remedies for violations of the Act are to either terminate the lease or make repairs at the landlord's expense. In other words, the purpose of the Act was never intended to create liability for personal injury or property damage for violation of its provisions.

The Court therefore held that the Act was inapplicable to the common law duty of a landlord in a personal injury case, which is extremely limited. Basically, a tenant takes the premises as he finds them. A landlord has no duty to furnish reasonably safe premises, and he is not generally liable for injuries caused by defects therein. The only exception is that a landlord has a duty to disclose a known defective condition which is unknown to the tenant and is not discoverable through reasonable inspection.

In short, a landlord's liability for a tenant's personal injury due to defective premises remains a nearly-impossible case to prove. The statutory duties of a landlord under the Landlord-Tenant Act only pertain to the lease agreement between the parties, but have no effect upon the common law rule.



Casey's Ky. Trivia Question:
What is the oldest town festival in Kentucky?

A. *Ham Days (Lebanon)*
B. *Court Days (Mt. Sterling)*
C. *Lincoln Days (Hodgenville)*
D. *Hillbilly Days (Pikeville)*

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

Stupid-Easy Recipe of the Month

These are Yummy Mummies!

Crescent Mummy Dogs

Here's a kid-pleasing Halloween treat!

Ingredients:

- 1 8 oz can refrigerated crescent rolls
- 2-3 slices American cheese, quartered
- 1 package your favorite hot dogs
- Mustard

Directions:

Heat oven to 375°. Unroll dough; separate into 4 rectangles. Press perforations to seal. Cut each rectangle into 10 strips, making a total of 40 pieces of dough. Slice cheese slices into quarters, wrap 1/4 slice of cheese covered by 4 pieces of dough around each hot dog to look like "bandages." Leave ~ 1/2 inch unwrapped at one end of each hot dog for its "face." Place wrapped hot dogs on cookie sheet covered with non-stick foil and bake 13-17 minutes or until dough is golden brown. With mustard, draw features on "face."

Favorite Pet of the Month

Cottonwood

This handsome fella and his 3 brothers came as a surprise to Barktown staff after they rescued his mom, Willow, who was surrendered at a shelter.

A few weeks after getting checked out by the vet, Willow delivered Cottonwood (pictured), Hickory, Sycamore and Buckeye. Equally adorable, these 7-week-old Chihuahua mix puppies need a loving home with patience and time for training.

Interested in one of these adorable puppies? Visit 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 with a photo and we'll try to put this in a future issue!

Harville
LAW OFFICES, PLLC

Anchorage Office Plaza
2527 Nelson Miller Parkway
Suite 102
Louisville, KY 40223

Phone: 502-245-2333
Fax: 502-245-2399

To be removed from our mailing list,
please call (502) 245-2333

E-mail: bdh@harvillelaw.com dts@harvillelaw.com

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.

visit us at harvillelaw.com

INSIDE THIS ISSUE: