

## APPENDIX A

# Supreme Court of Kentucky

2019-SC-0457-D  
(2019-CA-0577)

ADAM L. COLEMAN FOR THE  
ESTATE OF LINDA COLEMAN

MOVANT

V. BOYLE CIRCUIT COURT  
2018-CI-00074

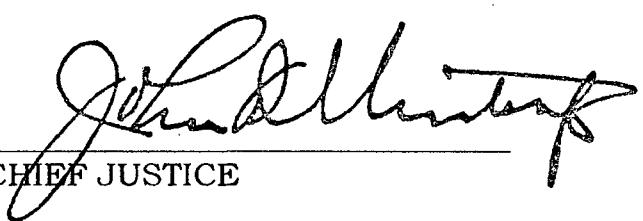
EPHRAIM McDOWELL REGIONAL  
MEDICAL CENTER

RESPONDENT

## **ORDER DENYING DISCRETIONARY REVIEW**

The motion for review of the decision of the Court of Appeals is  
denied.

ENTERED: August 13, 2020.

  
John D. Meier  
CHIEF JUSTICE

## APPENDIX B

Commonwealth of Kentucky  
Court of Appeals

NO. 2019-CA-000577-MR

ADAM L. COLEMAN AND  
ASHLEY COLEMAN

APPELLANTS

v.  
APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 18-CI-00074

EMPHRAIM McDOWELL REGIONAL  
MEDICAL CENTER

APPELLEE

ORDER  
DISMISSING APPEAL

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BEFORE: LAMBERT, MAZE, AND L. THOMPSON, JUDGES.

This cause comes before the Court on two motions: 1) Appellant Adam L. Coleman's motion for an extension of time in which to file a prehearing statement; and 2) Appellee's motion to dismiss the appeal. Appellants have also provided a written response to this Court's May 7, 2019 Show Cause Order, which

states that Ashley Coleman “would no longer like to be an additional plaintiff of this case as there would and could be delays due to the related facts of undergoing care for her pregnancy.” We construe this statement as a motion to dismiss Ashley Coleman as a party to this appeal. Having reviewed the record, and being otherwise sufficiently advised, IT IS HEREBY ORDERED as follows: 1) Appellants’ motion to dismiss Ashley Coleman as a party to this appeal is GRANTED; 2) Appellee’s motion to dismiss shall be, and hereby is, GRANTED. This appeal is DISMISSED; and 3) Appellant Adam L. Coleman’s motion for an extension of time in which to file a prehearing statement is DENIED AS MOOT.

#### *I. BACKGROUND*

On March 1, 2018, Adam L. Coleman (“Adam”) and Ashley Coleman (“Ashley”), his sister, filed a Complaint *pro se* in the Boyle Circuit Court alleging Appellee’s negligence caused the death of their mother, Linda Coleman. Adam is the administrator of Ms. Coleman’s estate. On December 10, 2018, the trial court denied Appellee’s motion to dismiss and ordered that Appellants had “until March 8, 2019 to retain legal counsel to represent the Estate, as they cannot proceed *pro se* in this matter.”

In spring 2019, Appellee again moved to dismiss the Complaint pursuant to CR<sup>1</sup> 41.02. The trial court granted the motion by order dated April 4, 2019. Adam filed a notice of appeal *pro se*. This Court issued its Show Cause Order because the notice of appeal identifies both Adam and Ashley as Appellants, but it was signed only by Adam. It is not alleged that Adam is an attorney licensed to practice law in Kentucky. On May 20, 2019, Adam and Ashley filed a response to the Show Cause Order stating Ashley no longer wishes to be a party.

On May 20, 2019, Appellee filed a motion to dismiss the appeal. Appellee argues the *pro se* notice of appeal constitutes the unauthorized practice of law.

## *II. ANALYSIS*

“There is no common law right to recover for the wrongful death of another.” *Reynolds v. Randolph*, 2018 WL 5304451, at \*5 (Ky. App. 2018) (unpublished),<sup>2</sup> *discretionary review denied* June 5, 2019. The statutory right of action for the wrongful death of another is codified in KRS<sup>3</sup> 411.130. Subsection (1) provides:

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<sup>1</sup> Kentucky Rules of Civil Procedure. CR 41.02 provides: “For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him.”

<sup>2</sup> *Reynolds* is considered by the Court pursuant to CR 76.28(4)(c).

<sup>3</sup> Kentucky Revised Statutes.

Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased.

The statute then sets forth the beneficiaries of the wrongful death action. The wrongful death claim belongs “only to the statutorily-designated beneficiaries.” *Reynolds, supra* at \*6 (citations omitted). The *Reynolds* Court explained:

Even though the personal representative must prosecute the [wrongful death] action, the action is pursued for “the benefit of those statutorily designated persons.” *Bennett v. Nicholas*, 250 S.W.3d 673, 675 n.1 (Ky. App. 2007). With no interest in the recovery, the personal representative is a “nominal” party, as the “real parties in interest are the beneficiaries whom [the personal representative] represents.” *Pete v. Anderson*, 413 S.W.3d 291, 299 (Ky. 2013) (quoting *Vaughn’s Adm’r v. Louisville & N.R. Co.*, 297 Ky. 309, 179 S.W.2d 441, 445 (1944)).

The duty the personal representative owes the statutory beneficiaries vis-à-vis a wrongful death claim is a limited one. The personal representative has a duty to prosecute the action. *See Pete*, 413 S.W.3d at 299. “In the context of the statute as a whole, ‘prosecute’ necessarily means ‘to commence and carry out a legal action.’” *Id.* (internal citations omitted). *However, if the personal representative is not a lawyer, she must retain the assistance of legal counsel to bring the action.* *Thompson v. Jewish Hosp. & St. Mary’s Healthcare, Inc.*, No. 2017-CA-000676-MR, 2018 WL 2078008, at \*2 (Ky. App. May 4, 2018). This rule makes sense

because “one may represent himself or herself *pro se* but that ability is limited to one’s self.” *Baldwin v. Mollette*, 527 S.W.3d 830, 835 (Ky. App. 2017). A personal representative is not acting on her own behalf in filing a wrongful death claim; she is acting on behalf of the statutory beneficiaries.

*Id.* (footnote omitted) (emphasis added).

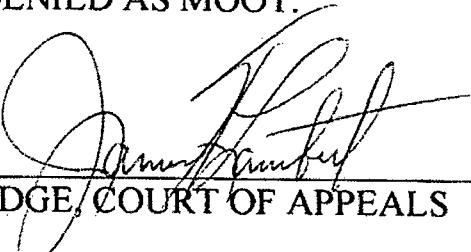
Appellants’ Complaint was filed “pursuant [to] KRS 411.130(1).”

Ashley has moved to be dismissed as a party, leaving only Adam as the Appellant. Because Adam may not proceed *pro se* on behalf of all statutory beneficiaries, we are constrained to dismiss this appeal.

### *III. CONCLUSION*

WHEREFORE, Appellant Ashley Coleman’s motion to be dismissed as a party is GRANTED. Appellee’s motion to dismiss is GRANTED. This appeal is DISMISSED. Appellant Adam L. Coleman’s motion for an extension of time in which to file a prehearing statement is DENIED AS MOOT.

ENTERED: JUL 10 2019

  
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JUDGE, COURT OF APPEALS

## APPENDIX C

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18-CI-0007 03/19/2019

Cortney Shewmaker, Boyle Circuit Clerk

COMMONWEALTH OF KENTUCKY  
BOYLE CIRCUIT COURT  
NO. 18-CI-00074

Filed Electronically

ENTERED

APR 04 2019

CORTNEY SHEWMAKER, CLERK  
BOYLE CIRCUIT COURT

ADAM L. COLEMAN AND ASHLEY  
COLEMAN

PLAINTIFFS

v.

**ORDER OF DISMISSAL**

EPHRAIM McDOWELL REGIONAL  
MEDICAL CENTER

DEFENDANT

The Defendants having moved this Court to dismiss the Complaint pursuant to CR 41.02, and the Court having reviewed the record and being otherwise sufficiently advised;

**IT IS HEREBY ORDERED AND ADJUDGED** that the Motion is **SUSTAINED** and all claims asserted in the Complaint shall be and hereby are **DISMISSED** with prejudice. There being no remaining claims, this action shall be dismissed and stricken from the docket.

This is a final and appealable Order, there being no just reason for delay.

This the 3<sup>rd</sup> day of

April, 2019.

JUDGE, BOYLE CIRCUIT COURT

TENDERED BY:

/s/ Pamela Adams Chesnut  
PAMELA ADAMS CHESNUT  
Attorneys for Defendant

Tendered

18-CI-00074 03/19/2019

Cortney Shewmaker, Boyle Circuit Clerk

Tendered

18-CI-0007 03/19/2019

Cortney Shewmaker, Boyle Circuit Clerk

### CLERK'S CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Order has been mailed to the following, via first class US mail, postage prepaid, on this 4 day of April, 2019:

Adam L. Coleman  
201 East Broadway  
Danville, KY 40422  
Adam301994@yahoo.com

✓  
also sent to 124 J E Woods Dr.  
Danville Ky 40422

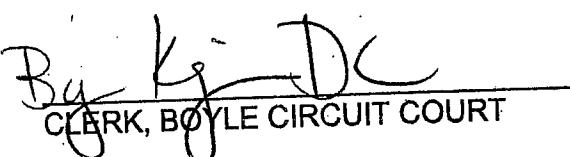
Ashley Coleman  
500 Woodspointe Drive  
Wilmore, KY 40390

✓

Pamela Adams Chesnut, Esq.  
Green Chesnut & Hughes, PLLC  
201 East Main Street, Suite 800  
Lexington, KY 40507

✓

CORTNEY SHEWMAKER, CLERK

  
CLERK, BOYLE CIRCUIT COURT

**Additional material  
from this filing is  
available in the  
Clerk's Office.**