

No. 25-

IN THE
Supreme Court of the United States

ROBERT G. HICKS, AS TRUSTEE OF THE
ROBERTA CHERRY HICKS TESTAMENTARY TRUST,

Petitioner,

v.

CITY OF HOPKINSVILLE, SEWERAGE AND WATER
WORKS COMMISSION, D/B/A HOPKINSVILLE
WATER ENVIRONMENT AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE KENTUCKY COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

ROBERT G. HICKS
Counsel for Petitioner
Post Office Box 718
Macclenny, Florida 32063-0718
(904) 234-3198
robertghicks@embarqmail.com



QUESTIONS PRESENTED

In an eminent domain proceeding in state court involving non-residents, does a failure to cite or follow that state's own clear statutory and decisional authority concerning issuance of a summons in an eminent domain proceeding cause that interlocutory judgment authorizing the taking to fail to pass muster under the Due Process Clause under the 14th Amendment of the U. S. Constitution and be subject to U S Supreme Court review when that state's supreme court refuses to grant discretionary review when such facts and authority are presented and the case has not proceeded beyond a special appearance contesting jurisdiction?

Does a state's highest court's failure to grant discretionary review of one of its state's intermediate appellate court's basic reiteration of an earlier depublished opinion which fails to mention or review under that state's supreme court controlling decisional authority, constitute an impermissible abuse of discretion and thereby deny an adversely impacted litigant Due Process of Law under the 14th Amendment of the U. S. Constitution?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose opinion is the subject of this Petition is as follows:

The Petitioner is Robert G. Hicks, trustee of the Roberta Cherry Hicks Testamentary Trust. Robert G. Hicks, individually, is not a party to this Petition as he has previously exhausted appellate remedies to this stage of the proceedings.

The Respondent is City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environment Authority.

STATEMENT OF RELATED CASES

City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environmental Authority v. Robert G. Hicks, Individually, and Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust

Civil Action No. 20-CI-00875, Christian Circuit Court, Kentucky
Interlocutory Order and Judgment entered January 22, 2021

Robert G. Hicks, Individually, and Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust v. City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environmental Authority

No. 2021-CA-0219-MR, Kentucky Court of Appeals
Opinion Affirming in Part, Reversing in Part, and
Remanding rendered April 8, 2022

Robert G. Hicks, Individually, and Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust v. City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environmental Authority

No. 2022-SC-0225-D, Supreme Court of Kentucky Order
Denying Discretionary Review and depublishing entered
October 12, 2022

Robert G. Hicks, Individually v. City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environmental Authority

No. 22-673, Supreme Court of the United States, Petition
for Writ of Certiorari denied 2023

City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environmental Authority v. Robert G. Hicks, Individually, and Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust

Civil Action No. 20-CI-00875, Christian Circuit Court, Kentucky

Amended Interlocutory Order and Judgment entered November 1, 2023

Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust v. City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environmental Authority

No. 2023-CA-1379-MR, Kentucky Court of Appeals
Opinion Affirming rendered November 1, 2024

Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust v. City of Hopkinsville, Sewerage and Water Works Commission, D/B/A Hopkinsville Water Environmental Authority

No. 2025-SC-0025-D, Supreme Court of Kentucky Order
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PETITION FOR WRIT OF CERTIORARI

In denying a petition for discretionary review of the opinion of the Kentucky Court of Appeals, the Kentucky Supreme Court let stand an opinion that, in effect, reissued an opinion that the Kentucky Supreme Court had expressly depublished and which ignored controlling case authority on the Kentucky Long Arm Statute of the Kentucky Supreme Court in *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51 (Ky. 2011) and *Hinners v. Robey*, 336 S.W.3d 891 (Ky. 2011). The standards set out in those cases make clear that an eminent domain action may in no wise be brought within the ambit of the Kentucky Long-Arm Statute, nor is there any reason to do so. While the Commonwealth of Kentucky has amended its Long-Arm Statute during the course of this litigation, the disputed provision, KRS 454.210(2)(a)6, has been changed only in having been redesignated KRS 454.210(2)(f). Even had the Kentucky Court of Appeals been correct in its interpretation of the statute, the opinion further overlooked, by failing to address raised Due Process, issues that had occurred in the failure to effectuate any manner of service of process on the non-resident landowner in an eminent domain action due to failures in the certified mailing process.

The Due Process issues beg consideration. The importance of these pillars of U. S. Constitutional Law need to be reinforced with the Kentucky court system. Apparently, there needs to be a reminder:

(1) that an appellate court opinion is not binding in ongoing litigation where the court expressly acknowledges that it does not have jurisdiction over the litigant to whom the opinion makes reference,

(2) that statutes are generally entitled to plain meaning interpretation,

(3) that in the absence of changed decisional authority at the level of the higher court, depublished opinions are not to find new life in a basically reiterated form,

(4) that *stare decisis* still controls and that controlling, on point opinions of a state's highest court may not simply be disregarded, and

(5) that applicable state statutes must be applied by the courts of that state where relevant to the proceedings before the bench.

Failure to insure to the degree possible that judgments of courts are not subsequently subject to attack on jurisdictional grounds is uneconomical, unjust, and works potentially to the disadvantage of innocent parties by imposing unnecessary costs on society through inefficient operation of the courts. To the extent that the Court can impress upon courts and practitioners the importance of legal jurisdiction, proper process and service of process, the Court should indulge every opportunity to do so.

The denial of discretionary review by the Kentucky Supreme Court in 2022-SC-0225-D (October 12, 2022), together with the depublication of the Kentucky Court of Appeals opinion, resulted in the Kentucky Supreme Court in 2025-SC-0025-D (August 6, 2025) abusing its discretion in denying discretionary review in implicitly allowing the Kentucky Court of Appeals in 2023-CA-1379-MR to basically adopt its previous opinion in 2021-CA-0219-MR opinion (which more recent opinion did not even address

a myriad of additional material issued that were raised and were argued in the interim) and thereby raising Due Process issues which can only find review by the United States Supreme Court taking up this case.

OPINIONS BELOW

The opinion of the highest court to review the merits is that of the Kentucky Court of Appeals (App. A), 2023-CA-1379-MR, issued November 1, 2024, which was designated not to be published. The Kentucky Court of Appeals denied rehearing in an unpublished order entered December 20, 2024. The trial court entered an Amended Interlocutory Order and Judgment in 20-CI-00875 on November 1, 2023, which is unpublished (App. B). The order of the Kentucky Supreme Court denying discretionary review in 2025-SC-0025-D entered August 6, 2025 (App. D) is unpublished.

JURISDICTION

The order of the Kentucky Supreme Court denying the motion for discretionary review of the Kentucky Court of Appeals opinion in this case was entered on August 6, 2025. A copy of that order appears at App. D. This Court has jurisdiction under Article III, Section 2, Clause 2 of the United States Constitution as implemented by 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states, in relevant part:

“No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Article VI, Paragraph 2 of the United States Constitution states, in relevant part:

“This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

KRS 416.590 states:

“Upon the application of the petitioner, and the filing of any necessary affidavits, the clerk of the court shall issue process against the owner to show cause why the petitioner does not have the right to condemn the lands, or the use and occupation thereof sought to be condemned. The summons shall contain a statement of the amount of the award and state that an answer or other pleading, if any, must be filed within twenty (20) days from date of service. The clerk shall make such orders as to nonresidents and persons under disability as are required by the statutes and Rules of Civil Procedure in actions against them in Circuit Court.”

KRS 454.210(2)(a) (pre July 15, 2024) states:

“A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person’s: . . .

6 Having an interest in, using or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated.”

KRS 454.210(2)(b) (pre July 15, 2024) states:

“When jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.”

STATEMENT OF THE CASE

This is a sequel to an earlier Petition for Writ of Certiorari before this Court in No. 22-673. This petition is by a separate and distinct party, and the facts and circumstances and legal issues have continued to grow more complex and convoluted in the interim. This is an eminent domain action for the taking of a permanent easement and a construction easement for a municipal water project. The City of Hopkinsville filed suit against

the non-resident property owners using the summons and manner of service customary to proceedings under the Kentucky Long-Arm Statute as opposed to that prescribed under the Kentucky Eminent Domain Act. Service of process was attempted by the Kentucky Secretary of State under KRS 454.210(3) (which requires under KRS 454.210(3), (recently redesignated KRS 454.210(3)(a)), as a predicate “personal jurisdiction . . . authorized by this section”, mailing process by certified mail, return receipt requested. No certified mailing return receipt was ever presented for signing nor has one ever been signed by Petitioner. Such a receipt was signed by a mail runner working for Petitioner while he was away, but she had no authorization from him, formally or informally, to do so.

The City argues that it effectuated service and obtained jurisdiction over Petitioner in compliance with the Kentucky Court of Appeals opinion in 2021-CA-0219-MR. That opinion included an express finding by that court that no Kentucky court at that time had jurisdiction over Petitioner, but that the Kentucky Long-Arm Statute was applicable in a condemnation action. The Kentucky Supreme Court had depublished that opinion in 2022-SC-0225-D.

Petitioner has consistently argued through the appellate process in this and the previous case basically as follows:

1. The City of Hopkinsville has the legal burden of establishing jurisdiction over Petitioner,

2. The City has not carried that burden at any point in time.

3. Petitioner has no obligation to do anything other than establish that the City's legal theory as to jurisdiction is incorrect.

4. The City cannot establish a basis for jurisdiction under the plain meaning of KRS 454.210(2)(a)6 as it read in its pre July 15, 2024 form (or even as, renumbered, it reads today).

5. *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51 (Ky. 2011) and *Hinnens v. Robey*, 336 S.W.3d 891 (Ky. 2011) establish the parameters for the Kentucky Long Arm Statute being applicable.

6. The parameters of these two Kentucky Supreme Court opinions cannot be met by an eminent domain action.

7. The City has never presented a cogent argument for the parameters of these opinions having been met.

8. Without the meeting of basis for jurisdiction under KRS 454.210(2), the City has no legal authority for even attempting service of process under KRS 454.210(3) through the Kentucky Secretary of State.

More recently, research by Petitioner has determined that the correct approach to jurisdiction and service would have been through the Eminent Domain Act and its KRS

416.590. This authority was submitted to the Kentucky Supreme Court as supplemental authority during its consideration of Petitioner's motion for discretionary review in 2025-SC-0025-D. It was accepted by the Kentucky Supreme Court as supplemental authority but, inexplicably, did not result in the Motion for Discretionary Review being granted.

FACTUAL BACKGROUND AND GENERAL LEGAL ARGUMENT

This is a clear case of continued failure on the part of the judicial system of the Commonwealth of Kentucky to give attention to clear statutory and decisional law to the detriment of basic notions of Due Process and property rights and the equal protection of the property rights of property owners residing out of state.

Petitioner, Robert G. Hicks, as trustee of the Roberta Cherry Hicks Testamentary Trust, owns property in Christian County, Kentucky. Part of this property is located in the City of Hopkinsville along a four lane divided highway. The property is owned as tenants in common by Petitioner in a fiduciary capacity and by him individually.

The City of Hopkinsville, through Hopkinsville Water Environment Authority, for a couple of years, by U. S. mail and email and at least one personal meeting, solicited Petitioner to donate an easement for a watermain project. With that failing, the City, by its legal counsel, J. Daniel Kemp, finally made what Petitioner deemed an unacceptable offer. A further suggestion of parameters of an offer for settlement purposes was made by Petitioner and was rejected. A condemnation action was threatened.

A Petition for Condemnation was filed on November 17, 2020. In the Christian County Circuit Court, this case has never progressed beyond a special appearance contesting jurisdiction, the protective proffering of defenses and issues, and notice of appeal of the interlocutory orders allowing the taking of the easements. Issues beyond jurisdiction have never been reached, though leave to pursue these issues in the circuit court was requested as relief if the appellate courts denied the jurisdictional arguments. No leave to pursue these additional issues has ever been granted. Thus, as the case stands, without further relief, Petitioner will be precluded from ever raising these issues in court.

The City's position, distilled to its essence, at every level, at every opportunity, has been:

(1) that the City has a right to exercise eminent domain power,

(2) that the proposed taking is proper in all respects as a foregone conclusion and any and all irregularities that could possibly suggest otherwise are nothing more than harmless error,

(3) that all that has been determined to date is the taking,

(4) that the right to appeal an Amended Interlocutory Order and Judgment is a statutory formality without substance,

(5) that the condemned property rights should be surrendered without any review of the terms of the proposed easement, and

(6) that the only matter of any consequence remaining in the condemnation process is to be determined in a proceeding subsequent to the upholding of the Amended Interlocutory Order and Judgment, that matter being the determination of the amount of damages to be awarded for the taking of the easements. Never mind the clear inapplicability of KRS 454.210(2)(a)6 to an eminent domain action (that statute being the City’s ultimately argued lynchpin [“Appellee argues that it fully complied with the long arm statute. . . Appellee . . . argues that Appellee strictly complied with the statutory scheme for giving notice to nonresidents via the long arm statute.”], and the lynchpin of the Kentucky Court of Appeals clearly erroneous opinion in 2021-CA-0219-MR [“whether the long arm statute is the proper means by which to give notice to a nonresident condemnee. We must answer this question in the affirmative.” This conclusion is reached despite the plain meaning of KRS 416.590, which has never been addressed. “The circuit court may properly exercise jurisdiction over a person who possesses a property interest within the Commonwealth KRS 454.210(2)(a)6.”]), a clearly erroneous conclusion of law under the Kentucky Long-Arm Statute as written at that time.

To date, there has been no question posed or argument presented by the City on whether the Kentucky Long-Arm statute even potentially applied or how it could be argued to be applicable, given the convoluted nature of that statute as it pertains to real estate, KRS 454.210(2)(a)6. Furthermore, though it was not Petitioner’s legal responsibility to do so, Petitioner put before the Kentucky Supreme Court by way of a Motion for Leave to File Supplemental Authority, which motion was granted by the Kentucky Supreme Court, the correct statute and

procedure whereby the City should have pursued its eminent domain action from its inception, but which the City has not, that statute and procedure being codified in KRS 416.590.

Jurisdiction and service of process was a matter on which the City had the burden of proof as such was crucial to establishing jurisdiction over parties who were clearly non-residents.

The troubling part beginning in the opinion in Kentucky Court of Appeals 2021-CA-0219-MR is that this is the first of the rulings in this case to expressly mention KRS 454.210(2)(a)6. That opinion, though depublished by the Kentucky Supreme Court in 2022-SC-0225, served almost verbatim as the Kentucky Court of Appeals opinion in 2023-CA-1379-MR. The court did not give any real consideration to *Caesars Riverboat Casino v. Beach* or *Hinnners v. Robey* (which opinions had interpreted KRS 454.210(2)(a), the umbrella over KRS 454.210(2)(a)6, and the reinforcement provided in KRS 454.210(2)(b) “only a claim arising from acts enumerated can be asserted.” *Caesars Riverboat Casino* itself states: “Only after the requirements of KRS 454.210 have been satisfied can it be said that personal jurisdiction over a non-resident extends to the outer limits permitted by federal due process. Federal due process cannot act to expand the reach of Kentucky’s long-arm statute beyond its statutory language.”

The Kentucky Court of Appeals in both 2021-CA-0219-MR and 2023-CA-1379-MR basically just emphatically stated that KRS 454.210(2)(a)6 is to be read as applying in any case in any manner pertaining to Kentucky real estate, period. (App. 6a). It further goes into minimum

contacts analysis (App. 6a) instead of being reined in by the quote in the immediately preceding paragraph, language expressly limiting by statute minimum contacts analysis when the statute provides a non-resident greater protection as to matters involving real estate.

The courts and opposing counsel, at each juncture during the whole tortured process, have refused to walk through how the provisos of KRS 454.210(2)(a)6 and KRS 454.210(2)(b) are met because it cannot be done with the slightest degree of intellectual integrity with respect to an eminent domain action. This has not, at any point, caused the Kentucky courts or the City of Hopkinsville counsel to revisit their legal research and see that the only correct approach is by means of KRS 416.590 when it comes to an eminent domain action, as opposed to KRS 454.210(2)(a)6, this being the case whether dealing with a nonresident or a Kentucky resident. An eminent domain action may be the clearest of actions regarding real estate that could not possibly meet the requirements of “acts” and claims “arising from acts enumerated,” wording from KRS 454.210(2)(a)6, as opposed to mere status as a landowner.

The Kentucky Court of Appeals then says that because KRS 454.210(2)(a)6 is receiving an interpretation “real estate” (a ruling not supported by any other cited Kentucky case law) and Petitioner owned real estate that the statute applies, that he is deemed properly served by service of process on the Kentucky Secretary of State as his agent, and the circuit court order is affirmed.

A Motion for Discretionary review is then made by Petitioner to the Kentucky Supreme Court raising the same arguments. While it could be said that *Caesars*

Riverboat Casino LLC v. Beach and *Hinnners v. Robey* should have been adequate Kentucky Supreme Court authority on the point together with the slightest bit of basic statutory interpretation, to show that the Kentucky Long - Arm Statute has no place in an eminent domain action, provide the Kentucky Supreme Court the correct statutory approach to obtaining jurisdiction in an eminent domain action, that clearly being KRS 416.590 (which had heretofore not been mentioned in this proceeding, much less followed) and one could reasonably expect that discretionary review would be granted? Wrong! The Kentucky Supreme Court declined discretionary review.

Thus, denial of discretionary review, in the face of this factual and procedural background rears its ugly head, with questions arising as to abuse of discretion, denial of Due Process, and denial of Equal Protection, violation of the Supremacy clause, all arising from a string of indefensible rulings, now totaling 7 opportunities for correction in the Commonwealth of Kentucky involving clear statutory requirements and basic tenants of Due Process. All 5 of the Kentucky Court of Appeals justices have been involved with its opinions in this case have concurred. Only an unknown number of Kentucky Supreme Court justices sufficient to depublish the Kentucky Court of Appeals opinion that the Kentucky Court of Appeals had designated for publication in 2021-CA-0219-MR have supported the landowners, a troubling fact in itself.

Depublication had attempted to save the day for the honor and credibility of the court, but for Petitioner, he was not even given the benefit to which he was entitled. Depublication of 2021-CA-0219-MR should have basically had the effect of taking that opinion totally and completely

off the table once the case returned to the circuit court. The Kentucky Court of Appeals ruled that there was no jurisdiction over Petitioner. That should have been the extent of the control of the ruling. That opinion could not be deemed to be basically an advisory opinion as to how to obtain jurisdiction over Petitioner. No court could issue a binding opinion as to a person over whom it did not have jurisdiction. The opinion had no further potential legal significance as *Caesars Riverboat Casino* and *Hinners v. Robey* were and remain controlling Kentucky Supreme Court authority as to the application of the Kentucky Long-Arm Statute and have never been addressed as such or discussed in the context of this case by the courts or the City, though such opinions were and are entitled to *stare decisis*. It is beyond preposterous that one of the three judge panel of the Kentucky Court of Appeals in 2021-CA-0219-MR, Justice Sara Walter Combs, who signed the order denying reconsideration of that opinion was then named the presiding judge in the panel in 2023-CA-1379-MR, refused to recuse herself, and then basically reiterated, in 2023-CA-1379-MR, the depublished opinion of 2021-CA-0219-MR. Worse yet, this affront to the Kentucky Supreme Court of an opinion it has depublished serving as the *ratio decidendi* of 2023-CA-1379-MR and basically being reiterated verbatim does not even cause the Kentucky Supreme Court to grant discretionary review of 2023-CA-1379-MR, even when additionally supplied with the correct, applicable, statutory authority of KRS 416.590.

Depublication by the Kentucky Supreme Court in 2022-SC-0225 of 2021-CA-0219-MR brings with it a whole string of issues in this case. Though these issues were raised with the circuit court and the Kentucky Court

of Appeals, and with additional issues on Petition for Rehearing with the Kentucky Court of Appeals and with the Kentucky Supreme Court, none of these issues have ever been addressed, even though they were required to be considered as a matter of right before the Kentucky Court of Appeals in 2023-CA-1379-MR.

DISCUSSION OF PERTINENT AUTHORITY

No credible argument can be made or has even been attempted for an eminent domain action to meet the following statutory standards contained in the Kentucky Long-Arm Statute (nor should there be any reason for such an action to do so, given the clearly applicable KRS 416.590, if the latter approach had been taken).

KRS 454.210(2)(a) states:

“A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person’s: . . .

6 Having an interest in, using or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated.”

KRS 454.210(2)(b) states:

“When jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.”

The following Kentucky Supreme Court case lays out the standards for application of the Kentucky long-arm statute and makes clear, under the analysis to be undertaken, that the statute can in no wise be applicable to an eminent domain action.

Caesars Riverboat Casino, LLC v. Beach, 336 S.W.3d 51, 56-57 (Ky. 2011) states:

“It is fundamental that in determining the meaning of a statute, we must defer to the language of the statute and are not at liberty to add or subtract from the legislative enactment or interpret it at variance from the language used. *Johnson v. Branch Banking and Trust Co.*, 313 S.W.3d 557, 559 (Ky. 2010). Upon application of this principle, an examination of the long-arm statute discloses no language indicating that its provisions should, *per se*, be construed as coextensive with the limits of federal due process. To the contrary, the statute sets forth nine specific provisions defining the kinds of activity that will allow a Kentucky court to exercise personal jurisdiction over a nonresident defendant. While we believe it fair to say that these provisions should be liberally construed in favor of long-arm jurisdiction,

their limits upon jurisdiction must be observed as defined. Thus, non-resident defendants whose activities fall outside the criteria of KRS 454.210 may not be subjected to long-arm jurisdiction. In addition, as previously noted, even when the defendant's conduct and activities fall within one of the enumerated categories, the plaintiff's claim still must 'arise' from that conduct or activity before long-arm jurisdiction exists. Claims based upon contacts, conduct, and activities which may not fairly be said to meet one of these explicit categories must be held to be outside the reach of the statute, regardless of whether federal due process might otherwise allow the assertion of *in personam* jurisdiction.

Moreover, we note that if the intent of the statute were to reach the outer limits of federal due process, it could easily have been drafted to say precisely that. In this vein, we note that some jurisdictions have phrased their long-arm statutes in just this way. . . . Only after the requirements of KRS 454.210 have been satisfied can it be said that personal jurisdiction over a non-resident extends to the outer limits permitted by federal due process. Federal due process cannot act to expand the reach of Kentucky's long-arm statute beyond its statutory language."

Without the meeting of the requirements of KRS 454.210(2), there is no access to service of process through the Kentucky Secretary of State pursuant to KRS

454.210(3). KRS 454.210(3) is not a stand alone procedural basis for service of process on a non-resident.

Analysis under standards established by *Caesars Riverboat Casino, LLC v. Beach* demonstrates that an eminent domain action cannot invoke the jurisdictional provisions of the Kentucky long-arm statute in KRS 454.210(2)(a)6. A like conclusion is reached under application of statutory construction cases on “plain meaning” such as *Johnson v. Branch Banking and Trust Co.*, 313 S.W.3d 557 (Ky. 2010) and *Hall v. Hospitality Resources*, 276 S.W.3d 775 (Ky. 2009).

The literal extent to which the Kentucky Court of Appeals’ attention has focused on the preeminent legal issue in this case, over the course of two opinions, is as follows:

“[W]e concluded that provisions of Kentucky’s long arm statute, KRS 454.210, authorized the Commonwealth to exercise *in personam* jurisdiction over Hicks both individually and as trustee. We concluded that the ownership interests in real property within our boundaries . . . established a contact sufficient to invoke the circuit court’s jurisdiction over them.”

November 1, 2024 opinion, pages 4-5. Case
No. 2023-CA-1379-MR

“Kentucky’s long-arm statute is the proper means to give notice to a non-resident condemnee that he may be subject to our jurisdiction.

That conclusion . . . rests on application of the rationale previously expressed in our initial decision.”

November 1, 2024 opinion, page 10. Case No. 2023-CA-1379-MR

Revisiting the April 8, 2022 opinion, the Court of Appeals there said only:

“The first question for our consideration, then, is whether the long arm statute is the proper means by which to give notice to a nonresident condemnee. We must answer this question in the affirmative.”

April 8, 2022 opinion Case No. 2021-CA-0219-MR

“Mr. Hicks, individually, and as Trustee, are separate and distinct “persons” as contemplated by KRS 454.210(1), and each has the necessary minimum contacts with the Commonwealth sufficient to invoke jurisdiction. These minimum contacts are found by virtue of Mr. Hicks’ and the Trust’s ownership interests in the parcel of real property located within the borders of the Commonwealth. The circuit court may properly exercise jurisdiction over a person who possesses a property interest within the Commonwealth. KRS 454.210(2)(a)6.”

April 8, 2022 opinion Case No. 2021-CA-0219-MR

Note the confusion of issues of the requirements of the long arm statute being met to provide jurisdiction over the cause of action and the separate and subsequent issue of the manner of service of process and notice to establish the second aspect of jurisdiction over the individual.

The greatest portion of the analysis in the earlier opinion was focused on “minimum contacts” which are necessary in order for long arm statute application to meet Due Process U. S. constitutional muster, whereas, in the present case, the issue is whether the express requirements of the Kentucky long arm statute in KRS 454.210(2)(a)6 have been met. The plain meaning of the statute is much more narrow in application than “minimum contacts.”

KRS Chapter 416 Eminent Domain is pretty much a self-contained chapter of the law and procedure pertaining to eminent domain in the Commonwealth of Kentucky. It would stand to reason that it should serve as the starting point in any eminent domain case, but it has not in this case, to date, even as to the most simple and crucial provision, KRS 416.590.

KRS 416.590 states:

“Upon the application of the petitioner, and the filing of any necessary affidavits, the clerk of the court shall issue process against the owner to show cause why the petitioner does not have the right to condemn the lands, or the use and occupation thereof sought to be condemned. The summons shall contain a statement of the amount of the award and state that an answer or other pleading, if any, must be filed within

twenty (20) days from date of service. The clerk shall make such orders as to nonresidents and persons under disability as are required by the statutes and Rules of Civil Procedure in actions against them in Circuit Court.”

Kipling v. City of White Plains, 80 S.W.3d 776 (Ky. Ct. App. 2002), some of the little published case law on eminent domain procedural matters in Kentucky and one in which Petitioner’s earliest counsel was counsel for parties in that case, and which that counsel should have, but never did, argue in this case or even call to Petitioner’s attention, states:

“The provisions contained in Chapter 416, specifically KRS . . . 416.590 . . . set forth the procedures to be followed in the condemnation process . . . KRS 416.590 covers the issuance of the summons to the property owner . . . ”

KRS 416.590 even comes with its own standard form, AOC-119, headed “CIVIL SUMMONS (CONDEMNATION),” which reads:

“The Commonwealth of Kentucky to the above-named Defendant(s): You are hereby summoned and required to appear and defend this action within 20 days, exclusive of the day of service, to show cause, if any, why the Plaintiff does not have the right to condemn the property or the use and occupation thereof. An award in the amount of \$_____, due the Defendant(s), has been made by the Court’s Commissioners. If you fail to answer, an Interlocutory Judgment

will be entered against you for the relief demanded in the Petition.”

The Kentucky Form AOC-119 condemnation summons, being the one prescribed by KRS 416.590, has never been used in this litigation in Christian County Circuit Court case number 20-CI-00875, at any point, nor has it been served in the manner prescribed by KRS 416.590. The Kentucky Secretary of State has no place in the process of the service of a condemnation summons. The City has no access to the Kentucky Secretary of State service mechanism because an eminent domain action is not one of the nine types of actions over which there is jurisdiction under the Kentucky Long-arm Statute.

Additionally, there has never been a certified mail return receipt signed by Petitioner or one presented to him for signature and refused. This does not pass statutory or procedural muster for service in the Commonwealth of Kentucky or U. S. Constitutional Due Process standards. Failing to come within an applicable jurisdictional statute and failing to serve process by means of an available service of process procedure, the Amended Interlocutory Order and Judgment entered by the Christian Circuit Court on November 1, 2023, is clearly invalid and should be quashed.

The general rules of *Mullane* are clearly applicable under the facts of the present case.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 states:

“The fundamental requisite of due process of law is the opportunity to be heard.’ *Grannis v. Ordean*, 234 U.S. 385, 394. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

. . . .

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457; *Grannis v. Ordean*, 234 U.S. 385; *Priest v. Las Vegas*, 232 U.S. 604; *Roller v. Holly*, 176 U.S. 398. The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, *supra*, and it must afford a reasonable time for those interested to make their appearance, *Roller v. Holly*, *supra*, and *cf. Goodrich v. Ferris*, 214 U.S. 71.”

Mullane at 315 states:

“[W]hen notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”

Speaking specifically to Due Process involving certified mailings, the rules and language of *Jones v. Flowers* are directly on point as to the present case.

Jones v. Flowers, 547 U.S. 220, 231 (2006) states:

“[I]f a feature of the State’s chosen procedures is that it promptly provides additional information to the government about the effectiveness of notice, it does not contravene the *ex ante* principle to consider what the government does with that information in assessing the adequacy of the chosen procedure. After all, the State knew *ex ante* that it would promptly learn whether its effort to effect notice through certified mail had succeeded.”

Jones at 237 states:

“[T]he government repeatedly finds itself being asked to prove that notice was sent and received. Using certified mail provides the State with documentation of personal delivery and protection against false claims that notice was never received . . . [T]he State cannot simply ignore that information . . . ”

REASONS FOR GRANTING THE PETITION

The opinion of the Kentucky Court of Appeals in 2023-CA-1379-MR is clearly erroneous. The Kentucky Court of Appeals’ interpretation of KRS 454.210(2)(a)6 is clearly erroneous and thereby renders the entire opinion worthless. An eminent domain action is unassailably an

in rem as opposed to an *in personam* action. There is no earthly reason to attempt to apply KRS 454.210(2)(a)6, a statute concerning *in personam* jurisdiction, where KRS 416.590 in an *in rem* eminent domain action is the clearly applicable statute. However, it is more than troubling that this petition is before the Court and once again begs the attention of the highest court of the land. The courts of Kentucky have failed on seven separate occasions to read and apply their own Kentucky Supreme Court precedents. More recently, their supreme court failed to do so given the benefit of being provided an alternative theory making use of the correct statutory framework.

This petition requests confirmation that unbridled power of governmental entities combined with courts will not be allowed when the result is deprivation of property without a property owner having a day in court on the merits once jurisdiction is properly established. A stated applicable basis for jurisdiction over parties and adherence to Due Process standards in service of process are the prerequisites of any court proceeding that will not later be overturned. Attorneys, as officers of the court, must not abuse the judicial process by ignoring or playing games as to jurisdictional matters. Statutes must be read and applied or found not to apply as the case may be, not judicially rewritten. State case law must be applied and the decisions of the highest court of the state must be followed until overturned by that court on appeal. Bedrock rules of Due Process must be present to mind of attorneys and jurists and guide their actions or our legal system descends into a quagmire of minutia and waste of time and money of the public, beyond the parties to the litigation, and confidence in our legal system suffers when there is

not adherence to the very basics on which all should be able to agree. Intransigence is no substitute for analysis.

This case needs to be the platform for a reminder for courts and counsel in Kentucky and across the nation that the very basics of Due Process are part and parcel of obtaining of jurisdiction and service of process.

CONCLUSION

The petition for a writ of certiorari should be granted to review the opinion of the Kentucky Court of Appeals entered on November 1, 2024 and the order of the Kentucky Supreme Court entered August 6, 2025, denying discretionary review. Ultimately, the Amended Interlocutory Order and Judgment entered by the Christian County Circuit Court in 20-CI-00875 should be quashed.

Respectfully submitted,

ROBERT G. HICKS
Counsel for Petitioner
Post Office Box 718
Macclenny, Florida 32063-0718
(904) 234-3198
robertghicks@embarqmail.com

October 2025

APPENDIX

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**APPENDIX A — OPINION OF THE
COMMONWEALTH OF KENTUCKY, COURT
OF APPEALS, RENDERED NOVEMBER 1, 2024**

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 2023-CA-1379-MR

ROBERT G. HICKS, AS TRUSTEE OF THE
ROBERTA CHERRY HICKS TESTAMENTARY
TRUST AND ROBERT G. HICKS, INDIVIDUALLY,

APPELLANT,

v.

CITY OF HOPKINSVILLE, SEWERAGE
AND WATER WORKS COMMISSION,
D/B/A HOPKINSVILLE WATER
ENVIRONMENT AUTHORITY,

APPELLEE.

APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW SELF, JUDGE
ACTION NO. 20-CI-00875

Rendered November 1, 2024

Appendix A

**OPINION
AFFIRMING**

** **

BEFORE: COMBS, LAMBERT, AND MCNEILL,
JUDGES.

COMBS, JUDGE: This case involves a utility seeking to obtain an easement over property owned by a non-resident of Kentucky. Among the contested issues is the validity of service of process over the Appellants by means of the long-arm statute, KRS¹ 454.210.

Robert G. Hicks, Trustee of the Roberta Cherry Hicks Testamentary Trust, appeals from an amended interlocutory order and judgment of the Christian Circuit Court entered on November 1, 2023. The order was entered in compliance with our remand following Hicks’s first appeal to this Court. Hicks argues that the trial court erred by failing to dismiss the action. In the alternative, he argues that the trial court erred by concluding that the trust was properly served with process and that the court was vested with jurisdiction to grant the petition for condemnation filed by City of Hopkinsville, Sewerage and Water Works Commission, d/b/a Hopkinsville Water Environment Authority (“Hopkinsville Water”). After our review, we affirm.

In the interest of judicial economy, we adopt the

1. Kentucky Revised Statutes.

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following statement of relevant facts from our initial opinion rendered on April 8, 2022:

In approximately 2017, [Hopkinsville Water] sought to begin construction of a public water main adjacent to Highway 41A in Christian County, Kentucky. Prior to commencing construction, [Hopkinsville Water] tried to obtain several utility easements from affected landowners along the path of the construction. [Hicks, in his individual capacity, owns the property sought to be encumbered by the easement as tenants in common with the testamentary trust of which he is the sole trustee].

[Hicks and Hopkinsville Water] engaged in a series of written communications over the years that followed. Despite diligent effort, [Hopkinsville Water] was unable to persuade [Hicks] to grant the necessary easement. In order to move the project forward, on November 17, 2020, [Hopkinsville Water] filed a petition for condemnation in Christian Circuit Court seeking to secure a utility easement on [Hicks's] parcel pursuant to Kentucky Revised Statutes ("KRS") Chapter 416 (eminent domain).

[Hopkinsville Water] then sought to serve [Hicks], who resides in Florida. [Hopkinsville Water] prepared summonses to be served by and through the Kentucky Secretary of State.

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The summons to [Hicks] in his individual capacity was mailed by the Secretary of State to an address in Leesburg, Florida, while the summons to [Hicks], Trustee, was mailed to an address in Jacksonville, Florida. Both mailings were sent via certified mail with a return receipt requested.

Thereafter, the Kentucky Secretary of State received notice from the United States Postal Service that the summons addressed to [Hicks in Jacksonville, Florida] was undeliverable. The summons mailed to [Hicks], individually, was presumed to have been delivered, though the Secretary of State did not receive a signed return receipt.

Having received no response from [Hicks], on January 11, 2021, [Hopkinsville Water] filed a motion for interlocutory order and judgment pursuant to KRS 416.610. [Hopkinsville Water] attempted to serve [Hicks] with this motion at the same addresses previously used. [Hicks], individually, received in the mail a copy of the motion.

On January 21, 2021, [Hicks] contacted counsel for [Hopkinsville Water] and stated that he had received [Hopkinsville Water's] motion but was never served with the underlying petition. [Hopkinsville Water], through counsel, then emailed to [Hicks] all prior pleadings.

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[Hicks] immediately filed a motion to dismiss the petition for lack of proper service.

On January 22, 2021, the Christian Circuit Court entered the interlocutory order and judgment pursuant to KRS 416.610. The order and judgment stated that Commissioners had been appointed per KRS 416.580, and that [Hicks] had been properly served with the summons and petition. The court ordered that [Hopkinsville Water] could take possession of the property after payment of \$21,000 to the clerk of court. On January 26, 2021, the court denied [Hicks's] motion to dismiss.

Finally, on February 1, 2021, [Hicks] filed a motion to reconsider, along with a supportive affidavit, in which he asserted that he had never been served with the petition in either his individual or Trustee capacities. A hearing on the matter was conducted on February 17, 2021, resulting in an order denying the relief sought.

Hicks v. City of Hopkinsville, No. 2021-CA-0219-MR, 2022 WL 1051985, at *1 (Ky. App. Apr. 8, 2022). Hicks appealed both orders to this Court.

In that first appeal, we considered whether Hicks and/or the testamentary trust had been properly served; whether the circuit court was vested with jurisdiction over Hicks and/or the testamentary trust; and, ultimately, whether the circuit court erred by permitting Hopkinsville

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Water to condemn the property interests. Rejecting Hicks's contention to the contrary, we concluded that provisions of Kentucky's long arm statute, KRS 454.210, authorized the Commonwealth to exercise *in personam* jurisdiction over Hicks both individually and as trustee. We concluded that the ownership of interests in real property within our boundaries by Hicks and the testamentary trust established a contact sufficient to invoke the circuit court's jurisdiction over them.

We noted that provisions of KRS 454.210(3) established the Kentucky Secretary of State as agent for service of process of nonresident persons and also described the means by which process was served. We concluded that Hicks, individually, and Hicks, as trustee, are separate and distinct "persons" as contemplated by KRS 454.210(1). We reasoned that the Secretary of State complied with the requirements of this provision by sending separate certified mailings, return receipt requested, to Hicks at the two addresses provided by Hopkinsville Water.

However, although Hicks, individually, had been properly served, the certified mail sent to him in his capacity as trustee in Jacksonville, Florida, was returned to the Secretary of State as undeliverable. We concluded that notice to the testamentary trust was not mailed to the correct address and, consequently, that the trust had not been properly served. We rejected the contention of Hopkinsville Water that service upon Hicks in his individual capacity constituted effective service upon him as trustee. Specifically, we concluded as follows:

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We have no basis for concluding that service to [Hicks], individually, in Leesburg, Florida, constitutes constructive service or other legal notice to [Hicks], Trustee, sufficient to establish jurisdiction over the Trust. For purposes of ensuring that each party has received due process, service must be made on every person. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 320, 70 S. Ct. 652, 660, 94 L. Ed. 865 (1950). “No personal judgment shall be rendered against a defendant constructively summoned[.]” KRS 454.165. “Absent an appearance by the party, constructive service alone is not sufficient to subject nonresidents to a personal judgment[.]” *Soileau v. Bowman*, 382 S.W.3d 888, 891 (Ky. App. 2012). Therefore, service on [Hicks], individually, does not constitute constructive service on the Trust.

Hicks, 2022 WL 1051985, at *6.

We concluded that Christian Circuit Court lacked jurisdiction over the testamentary trust and its property interest within the Commonwealth until such time as Hicks, as trustee, was properly served with process in the manner prescribed by our long-arm statute. We noted that Hopkinsville Water was free to attempt such service. We regarded Hicks’s motion to dismiss the petition as moot and affirmed the court’s order denying it, but we remanded the matter for further proceedings.

By its order entered on October 12, 2022, the Supreme Court of Kentucky denied discretionary review and

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ordered the opinion of this Court not to be published. Accordingly, our opinion resolving the initial appeal and remanding the matter to Christian Circuit Court became final on October 18, 2022.

Upon remand, the circuit court considered the renewed effort of Hopkinsville Water to effect service upon Hicks as trustee of the testamentary trust. The trial court observed that Hopkinsville Water sent the summons and a copy of the petition by certified mail through the Secretary of State's office to an address that Hicks confirmed was the correct address for the trust. The Secretary of State's return was duly filed in the record on August 22, 2023. The return recited that the Secretary of State "has received neither the postal return receipt card, nor the undelivered letter." The circuit court determined that Hicks, as trustee, was served with process in accordance with the provisions of our long-arm statute and that the trust was thereby subject to its jurisdiction.

The circuit court's amended interlocutory order and judgment were entered on November 1, 2023. The court determined that commissioners had been appointed pursuant to the provisions of KRS 416.580 and concluded that the commissioners' report conformed to pertinent statutory provisions. Therefore, it concluded that Hopkinsville Water was authorized to exercise the right of eminent domain to condemn the property interest identified in the petition and ordered that Hopkinsville Water take possession of the property after payment of \$21,000 to the clerk of court. The court again denied Hicks's motion to dismiss the action as moot. This appeal followed.

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Hicks’s arguments on appeal “proceed on the basis of the failure of [Hopkinsville Water] to properly establish jurisdiction and effectuate service . . . on an out of state resident.” However, the trial court **did not err** by concluding that Hopkinsville Water established the court’s jurisdiction over the trust and its nonresident agent.

At the time of our remand, Kentucky’s long-arm statute, KRS 454.210,² provided, in part, as follows:

- (1) As used in this section, “person” includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a nonresident of this Commonwealth.
- (2)(a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person’s:

....

- 6. Having an interest in, using, or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of,

2. This version of the long-arm statute was in effect from July 27, 2019 to July 14, 2024, the pertinent period of time involving this case.

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or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated

Where personal jurisdiction was authorized by this provision, service of process was to be made upon the Secretary of State who, for this purpose, was deemed to be the statutory agent of such person. KRS 454.210(3).

KRS 454.210(3)(b) provided that the clerk of court in which the action was brought would issue a summons against the defendant named in the complaint. The clerk could execute the summons by transmitting an electronically attested copy of the complaint and summons to the Secretary of State. KRS 454.210(3)(b)(2). The statute then required that the Secretary of State:

within seven (7) days of receipt thereof in his office, mail a copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall make the usual return to the court, and in addition the Secretary of State shall make a return to the court showing

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that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. **Summons shall be deemed to be served on the return of the Secretary of State** and the action shall proceed as provided in the Rules of Civil Procedure.

KRS 454.210(3)(c) (emphasis added).

On June 26, 2023, the clerk issued the summons and executed it by forwarding it to the Office of the Secretary of State along with a copy of the petition. On this date, the Secretary of State's office forwarded a copy of the summons and petition by certified mail to Hicks, as trustee, to the correct address, return receipt requested. The Secretary of State's return was filed of record on August 22, 2023. The return recited that the Secretary of State "has received neither the postal return receipt card, nor the undelivered letter." These actions conformed to the statute's requirements, and Hicks, as trustee, was deemed to have been properly served. The trust became subject to the jurisdiction of the circuit court.

We are not persuaded by Hicks's contention that due process requires the Secretary of State's office to "send process out for service again" and again to the same address until it can show that delivery was either actually effectuated or refused. It suffices that Hicks, as trustee, was made aware through provisions of our long-arm statute that the trust could be "haled into court" in this jurisdiction; that summons against him (as trustee) was properly issued and executed; and that he was provided

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notice of the proceeding reasonably calculated to reach him. As we observed in our initial opinion, actual notice of the proceedings is not required to effectuate service. *HP Hotel Management, Inc. v. Layne*, 536 S.W.3d 208 (Ky. App. 2017) (citing *Cox v. Rueff Lighting Co.*, 589 S.W.2d 606 (Ky. App. 1979)). Similarly, the lack of a signed return receipt of delivery does not render the service invalid.

Kentucky's long-arm statute is the proper means by which to give notice to a non-resident condemnee that he may be subject to our jurisdiction. That conclusion does not rest on the law-of-the-case doctrine as argued by Hicks in his brief. Instead, it rests on application of the rationale previously expressed in our initial decision. While Hicks describes that opinion variously as "egregious," "dubious," "untenable," and an "outlier," the Supreme Court of Kentucky declined to accept review. (A petition for writ of *certiorari* filed with the Supreme Court of the United States was also denied.) Consequently, we are not persuaded that our explanation of the applicability and operation of our long-arm statute under the circumstances of this case is incorrect.

Finally, Hicks argues that the condemnation of the trust's property rights without proper service violated his constitutional right to due process. Having determined that Mr. Hicks, as trustee, was properly served, we conclude this argument is moot.

Parenthetically, we have noted Hicks's wholly unsupported allegation that counsel for Hopkinsville Water engaged in *ex parte* communication with the court

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prior to entry of its order. His own choice of adjectives (“egregious,” “dubious,” and “untenable”) aptly describes the nature of his arbitrary and contemptuous allegations. We refrain from additional comment.

We affirm the interlocutory order and judgment of the Christian Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT: BRIEF FOR APPELLEE:

Robert G. Hicks, *pro se*
Macclenny, Florida

Duncan Cavanah
Hopkinsville, Kentucky

**APPENDIX B — AMENDED INTERLOCUTORY
ORDER AND JUDGMENT OF THE
COMMONWEALTH OF KENTUCKY,
CHRISTIAN CIRCUIT COURT, DIVISION I,
FILED OCTOBER 2023**

COMMONWEALTH OF KENTUCKY
CHRISTIAN CIRCUIT COURT
DIVISION I

CIVIL ACTION NO. 20-CI-00875

CITY OF HOPKINSVILLE SEWERAGE
AND WATER WORKS COMMISSION,
D/B/A HOPKINSVILLE WATER
ENVIRONMENT AUTHORITY,

PETITIONER,

v.

ROBERT G. HICKS AND ROBERT G. HICKS,
TRUSTEE OF THE ROBERTA CHERRY HICKS
TESTAMENTARY TRUST,

RESPONDENT.

**AMENDED INTERLOCUTORY ORDER
AND JUDGMENT**

This matter is back before this court upon remand from the Kentucky Court of Appeals and a motion to dismiss filed by the Respondent, Robert G. Hicks, individually and as trustee of the Roberta Cherry Hicks Testamentary Trust (the Trust).

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In an opinion rendered on April 8, 2022, the Kentucky Court of Appeals, case number 2021-CA-0219-MR, affirmed in part and reversed in part and remanded an interlocutory order and judgment pursuant to KRS 416.610.

The Court of Appeals concluded that the Hopkinsville Water Environment Authority (HWEA), the petitioner in the underlying condemnation action, properly utilized Kentucky's long arm statute to attempt service of process on Mr. Hicks, both individually and as trustee of the Roberta Cherry Hicks Testamentary Trust. The Court of Appeals further concluded that Mr. Hicks, individually, was properly served, as the Secretary of State posted the certified mail at the correct address and otherwise complied with KRS 454.210(3)(c).

However, the Court of Appeals determined that the Trust was not properly served because HWEA attempted to effect service on the Trust at the address for Mr. Hicks, individually, as opposed to the correct address for the Trust. The Court of Appeals affirmed the Interlocutory Order and Judgment in all other respects but remanded to this court because the Trust was not properly served, and this court did not have jurisdiction over the Trust.

Subsequent to the rendering of the Court of Appeals opinion, Mr. Hicks filed a petition for discretionary review with the Kentucky Supreme Court which was denied. In addition, Mr. Hicks filed a petition for writ of certiorari with the United States Supreme Court which was also denied. On October 12, 2022, the Kentucky Supreme

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Court issued an order de-publishing the Court of Appeals opinion (2022-SC-0225).

The matter is now on remand in Christian Circuit Court to address the issue pertaining to the service of Mr. Hicks as trustee, as well as Mr. Hicks' motion to dismiss the condemnation case.

In support of his motion to dismiss, Mr. Hicks again raises the same issues that were raised in this court previously and also in the Court of Appeals. Specifically, Mr. Hicks continues to argue that Kentucky's long arm statute does not extend to a nonresident condemnee – Mr. Hicks and Mr. Hicks as trustee in this case.

Fortunately, the Court of Appeals expressly addressed this issue in its opinion:

The first question for our consideration, then, is whether the long arm statute is the proper means by which to give notice to a nonresident condemnee. We must answer this question in the affirmative.

(COA, p.13)

Mr. Hicks next argues that this court does not have the authority to exercise jurisdiction over out of state residents for the purpose of condemnation proceedings. Again, this specific issue was expressly addressed by the Court of Appeals which concluded that Mr. Hicks, individually, and as trustee, are separate and distinct

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“persons” as stated by KRS 454.210(1), and each has the necessary minimum contacts with the Commonwealth sufficient to invoke jurisdiction. COA, p.14.

These minimum contacts are found by virtue of Mr. Hicks’ and the Trust’s ownership interests in the parcel of real property located within the borders of the Commonwealth which is the subject of the condemnation action. As a result, the Court of Appeals concluded that the Christian Circuit Court may properly exercise jurisdiction over a person who possesses a property interest within the Commonwealth pursuant to KRS 454.210(2)(a)6. COA, p.14.

Because Mr. Hicks, individually, acknowledges that he has been properly served pursuant to Kentucky’s long arm statute and is properly before this court, the only issue that remains is proper service upon Mr. Hicks as trustee. Again, the Court of Appeals determined that Mr. Hicks, trustee, was not properly served because the certified mail sent from the Secretary of State’s office was sent to the incorrect address.

Since that time, HWEA has again attempted service upon Mr. Hicks, trustee, by sending a copy of the summons via certified mail through the Secretary of State’s office to a post office box in Leesburg, Florida which Mr. Hicks has acknowledged in open court is the correct address for the Trust. Mr. Hicks also acknowledged that he has received a copy of the summons via email in his capacity as trustee.

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Further, Mr. Hicks acknowledges that the post office box in Leesburg, Florida which he acknowledges is the correct address for the Trust has received a certified letter from the Kentucky secretary of state. Mr. Hicks has someone who “checks his mail” at the P.O. Box whose name is Judy Leaver, however, Ms. Leaver does not have authority to sign anything on his behalf.

Pursuant to KRS 454.210(3)(c), the summons shall be deemed to be served on the return of the secretary of state confirming that the acts contemplated by the statute have been performed, specifically that the secretary of state has mailed a copy of summons and complaint to the defendant, by certified mail, at the correct address. The acts contemplated by the statute have been performed, and the return of the secretary of state has been filed of record in this case. As a result, the court finds that Robert G. Hicks, trustee of the Roberta Cherry Hicks Testamentary Trust, has now been properly served pursuant to Kentucky’s long arm statute and is subject to the jurisdiction of this court.

In addition to the foregoing, the court makes the following Findings of Fact:

1. Commissioners have been re-appointed by the court pursuant to KRS 416.580, and the appointed commissioners have filed their report, said Report dated September 20, 2023.
2. Summons was issued to Mr. Hicks, both individually and as trustee, on June 15,

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2023, via secretary of state. As of the same date, a summons was mailed via U.S. Mail, with same being un-retuned to Counsel for Petitioner. On June 16, a copy of the summons in this case was delivered via email to Mr. Hicks. At hearings before this court on July 19, 2023, and September 6, 2023, Mr. Hicks has acknowledged to the court that the summons was sent to the correct addresses for himself and the Trust, and that the email from counsel for HWEA was received, and that he has not personally checked the post office box for the Trust. Based on the foregoing, the court finds that Mr. Hicks, individually, and Mr. Hicks, trustee, have been properly served with summons and petition.

3. The owners, Mr. Hicks, individually, and Mr. Hicks, trustee, have filed various pleadings putting in issue the right of the petitioner to condemn the property.
4. Several of the issues raised by Mr. Hicks had been previously addressed in the Court of Appeals opinion dated April 8, 2022. In addition, upon remand, at hearings before this court on July 19, 2023, and September 6, 2023, this court afforded Mr. Hicks the opportunity to supplement his written pleadings with oral arguments.

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5. For the reasons cited in the Court of Appeals opinion and in this Order, this court has determined that HWEA does have the right, pursuant to KRS 416.610, to proceed with this condemnation action.
6. The court has examined the Report of Commissioners dated September 20, 2023, pursuant to KRS 416.610(1) and has found that same conforms to the provisions of KRS 416.580.

Based on the foregoing findings of fact, and the court being otherwise fully and sufficiently advised, **IT IS HEREBY ORDER AND ADJUDGED** as follows:

1. The motions by Mr. Hicks, individually, and Mr. Hicks, trustee, to dismiss this case are **DENIED**.
2. All parties to this action are properly before the court.
3. The Report of Commissioners dated September 20, 2023, conforms to the requirements of KRS 416.580.
4. The Petitioner has the right, pursuant to the Kentucky imminent domain act, KRS 416.550 et seq. and other applicable law, to condemn the property identified in the complaint.

Appendix B

5. The Petitioner has previously, on or about January 26, 2021, paid the Commissioner's Award of \$21,000.00 to the Clerk of the Court, and is thereby authorized to take possession of the property.
6. If no exception is taken from this Interlocutory Order and Judgment within thirty (30) days, the Master Commissioner of this court shall execute and deliver an easement conveying all rights related thereto to the Petitioner upon payment of the funds set forth in paragraph 5 above in conformance with this Judgment.
7. This is a final and appealable Order as to the Petitioner's rights to condemn the property, and there is no just cause for delay.

SO ORDERED, this __ day of October 2023.

/s/ Andrew C. Self
Andrew C. Self, Judge
Christian Circuit Court, Division 1

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**APPENDIX C — ORDER OF THE
COMMONWEALTH OF KENTUCKY, COURT
OF APPEALS, ENTERED DECEMBER 20, 2024**

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 2023-CA-1379-MR

ROBERT G. HICKS, AS TRUSTEE OF THE
ROBERTA CHERRY HICKS TESTAMENTARY
TRUST AND ROBERT G. HICKS, INDIVIDUALLY,

APPELLANTS,

v.

CITY OF HOPKINSVILLE, SEWERAGE
AND WATER WORKS COMMISSION,
D/B/A HOPKINSVILLE WATER
ENVIRONMENT AUTHORITY,

APPELLEE.

APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW SELF, JUDGE
ACTION NO. 20-CI-00875

Entered December 20, 2024

23a

Appendix C

**ORDER
DENYING PETITION FOR REHEARING**

** ** *

BEFORE: COMBS, LAMBERT, AND MCNEILL,
JUDGES.

Having considered the Petition for Rehearing and
the Response thereto, and being sufficiently advised, the
COURT ORDERS that the petition be, and it is hereby,
DENIED.

ENTERED: 12/20/2024 /s/ [Illegible] McNeill
JUDGE, COURT
OF APPEALS

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**APPENDIX D — ORDER OF THE
SUPREME COURT OF KENTUCKY,
ENTERED AUGUST 6, 2025**

SUPREME COURT OF KENTUCKY

2025-SC-0025-D
(2023-CA-1379)

ROBERT G. HICKS, AS TRUSTEE OF
THE ROBERTA CHERRY HICKS
TESTAMENTARY TRUST, ET AL.,

MOVANTS,

v.

CITY OF HOPKINSVILLE, SEWERAGE
AND WATER WORKS COMMISSION,
D/B/A HOPKINSVILLE WATER
ENVIRONMENT AUTHORITY,

RESPONDENT.

Entered August 6, 2025

ORDER DENYING DISCRETIONARY REVIEW

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

ENTERED: August 6, 2025.

/s/ Debra Hembree Lambert
CHIEF JUSTICE