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Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0782-MR

SCOTT O'LOUGHLIN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED AND STEFAN GEARHART, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED — APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 17-CI-005454

DAVE'S TOWING SERVICE, INC. — APPELLEE

AND

NO. 2025-CA-0842-MR

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INDIVIDUALLY AND ON BEHALF
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SIMILARLY SITUATED CROSS-APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: CETRULO, ECKERLE, AND MOYNAHAN, JUDGES.

ECKERLE, JUDGE: This matter arises from a consumer class action concerning the towing of vehicles from private parking lots, allegedly in violation of Louisville Metro's Private Towing Ordinance § 115.450 *et. seq.* ("the Ordinance") and the Kentucky Consumer Protection Act ("KCPA"), Kentucky Revised Statutes ("KRS") 367.110 *et. seq*. Appellants/Cross-Appellees, Scott O'Loughlin ("O'Loughlin") and Stefan Gearhart ("Gearhart"), individually and on behalf of a certified class of others who are similarly situated ("the Class") (collectively "Vehicle Owners"), challenge the Jefferson Circuit Court's June 9, 2025, Memorandum and Order granting a directed verdict in favor of Appellee/Cross-Appellant, Dave's Towing Service, Inc. ("Dave's Towing") as to the claims of the unnamed Class members. Dave's Towing cross-appeals the Trial Court's contemporaneous, directed verdict in favor of Vehicle Owners as to Dave's

Towing's liability for violating the Ordinance and for damages. After a thorough review of the issues, and after having conducted oral arguments, we find that the Trial Court lacked subject-matter jurisdiction under the KCPA and Kentucky Constitution, because Vehicle Owners did not purchase or consume services from Dave's Towing and failed to meet the jurisdictional prerequisite for damages. Hence, as the Trial Court acted without authority, we must vacate the rulings, directed verdicts, and judgments that it issued.

I. FACTUAL AND PROCEDURAL BACKGROUND

On Sunday, June 11, 2017, O'Loughlin's vehicle was parked at his condominium complex located at 3320 Bardstown Road in Louisville, Jefferson County, Kentucky. The parking lot was being resurfaced, but O'Loughlin was uncertain of the work timeline. At approximately 9:00 a.m., a neighbor alerted O'Loughlin that his car was being towed. O'Loughlin approached Dave's Towing's driver and requested relief. The driver advised O'Loughlin that he could release the vehicle in exchange for a payment of $75 in cash. O'Loughlin could not furnish the cash, and Dave's Towing then impounded O'Loughlin's vehicle, towing it from the condominium parking lot to Dave's Towing's storage yard[1] at

[1] Ordinance § 115.450(D) (Lou. Metro Am. Ord. No. 236-2007, approved Nov. 12, 2007), defining "storage yard" as "[a]ny property used by a private tow operator upon which vehicles that have been privately impounded are stored." This version of the Ordinance was in effect during the Class Period identified *infra*. The Ordinance was amended on November 11, 2021.

4822 Poplar Level Road, which is also in Louisville. Later the same day, O'Loughlin traveled to Dave's Towing's storage yard to attempt to retrieve his vehicle. Finding no attendant present, he contacted Dave's Towing by telephone and was advised that he could not retrieve his vehicle until the following day. On June 12, 2017, O'Loughlin returned to the storage yard again for his vehicle. Dave's Towing's staff told O'Loughlin that it did not accept credit cards, only cash, for the payment of impound fees. On June 13, 2017, O'Loughlin returned with a cash payment of $213, whereupon Dave's Towing released O'Loughlin's vehicle.

On Saturday, August 19, 2017, Gearhart parked his vehicle at Sergio's World of Beers ("Sergio's") located at 1604 Story Avenue in Louisville. Gearheart went to Butchertown Social, an adjacent bar and music venue. Approximately 30 minutes later, Gearhart witnessed Dave's Towing removing his vehicle. Gearhart contacted Dave's Towing by telephone and was advised that he could retrieve his vehicle at its storage yard. Gearhart arrived at Dave's Towing's storage yard on the same evening but found no attendant present. After Gearhart called Dave's Towing again, an employee arrived and informed Gearhart that Dave's Towing could only accept a cash payment for his impound fee. Gearhart went to an ATM to withdraw cash, returned to the storage yard, and paid $138 in cash for the release of his vehicle.

On October 16, 2017, O'Loughlin and Gearhart filed a complaint in their individual capacities and on behalf of the Class, whose motor vehicles were towed from private parking lots by Dave's Towing or its agents allegedly in violation of the Ordinance between June 11, 2012, and the filing of the complaint ("Class Period"). Record ("R.") at 1-12. Specifically, Vehicle Owners alleged that, during the course of impounding their vehicles, Dave's Towing committed multiple violations of the Ordinance by failing to obtain written, signed, and contemporaneous authorization from parking lot representatives to remove the vehicles and by refusing to accept commercially reasonable tender, including credit cards, for the costs of towing and storage.

Vehicle Owners' complaint asserted that Dave's Towing regularly and continually violated the Ordinance, affecting hundreds of members of the Class. Further, Vehicle Owners alleged that Dave's Towing compelled them to purchase its "services," which they defined as the towing, storage, and release of their vehicles. R. at 9. Vehicle Owners claimed that they suffered actual damages, specifically the towing fees, because of Dave's Towing's knowing violations of the Ordinance. Finally, Vehicle Owners alleged that Dave's Towing's conduct violated the KCPA. They sought actual and punitive damages, costs, attorney's fees, pre- and post-judgment interest, and "all other relief to which they are entitled under law or in equity." R. at 9, 303.

On July 16, 2018, which was not quite one year into the litigation, Dave's Towing filed a motion for summary judgment asserting that the KCPA did not apply to the facts of the case, because Vehicle Owners did not purchase services from Dave's Towing and thus did not constitute actual consumers. R. at 26-27. The Trial Court denied the motion for summary judgment. Subsequently, Dave's Towing filed motions to dismiss pursuant to Kentucky Rule of Civil Procedure ("CR") 77.02(2), alleging that Vehicle Owners failed to prosecute the claim over the course of two years. The Trial Court, however, found that Vehicle Owners had engaged in document discovery and pursued settlement negotiations, and it remanded the motions to dismiss and maintained the action on its docket.[2]

During subsequent discovery, Vehicle Owners sought to compel Dave's Towing to provide full responses to written interrogatories. For example, they claimed that, in response to a request for all of its written contracts with private lots that were in effect during the Class Period, Dave's Towing initially provided towing contracts from only two businesses – Sergio's and Brown Suburban Condominiums. Ultimately, Dave's Towing produced towing contracts for over 30 public and private entities in Louisville Metro, including the Kentucky State Fairgrounds, Louisville International Airport, numerous apartment

[2] This two-year delay is only one example of the protracted nature of this action, which has persisted for over eight years.

complexes, and various retail businesses. R. at 1095-1126. Despite producing documents advertising that "impounds are our specialty," Dave's Towing conceded that it had no written policies regarding the towing, storage, and/or release of impounded vehicles. *Id.* Dave's Towing also acknowledged that it obtained no contemporaneous, written authorizations from private parking lot owners permitting it to tow specific vehicles, which Ordinance § 115.456 requires.

In his November 19, 2020, deposition, via Zoom, David Jones ("Jones"), the sole owner and corporate designee for Dave's Towing, also admitted violating the Ordinance. He testified that his company did not retain "tow tickets," on which its drivers documented information concerning each vehicle, including the location from which the vehicle was towed. R. at 189-90. Jones claimed that, once a vehicle owner paid the impound fee, "it's over," and he saw no need to retain the records. R. at 190, 194. Additionally, Jones confessed that Dave's Towing could not produce contemporaneous, signed authorizations from representatives of the parking lots from which vehicles were towed. Further, he recognized that Dave's Towing did not have an attendant at the storage yard 24 hours each day, seven days per week; it routinely denied people access to their vehicles until the next day; and it either could not or did not accept credit card payments for impound fees, all of which were contrary to Ordinance § 115.457.

On December 19, 2021, Vehicle Owners sought Class certification

pursuant to CR 23, alleging that Dave's Towing's violations of the Ordinance had regularly occurred and continue to occur; that there were hundreds of members to the Class; that Vehicle Owners' claims were typical of the Class; and that Vehicle Owners could fairly and adequately protect the interests of the Class. Dave's Towing filed a response objecting to the certification of the Class and moved to dismiss.

By Order dated May 19, 2022, the Trial Court denied both parties' motions. R. at 271-80. As to Class certification, the Trial Court held that although Vehicle Owners had "generally described their class and their claim and issues the Court may need to address, they [had] not done so with such precision that the Court [could] confidently craft an order that complies with CR 23.03(2)." R. at 277. Moreover, the Trial Court held that Vehicle Owners' counsel had not provided enough information to show that they were competent to represent the Class as required under CR 23.07 but noted that "[s]hould [Vehicle Owners] make any further motions to certify class, they shall tender an order that meets the demanding requirements of CR 23.03 and 23.07." R. at 278. The Trial Court declined to dismiss the matter for failure to state a claim, finding that Vehicle Owners had adequately pled their causes of action, and jurisdiction was proper. Specific to jurisdiction, the Trial Court stated as follows:

> While it is true that each of the Plaintiffs' compensatory damages claims are in the hundreds of dollars and may

> not meet the jurisdictional amount requirement of Circuit Court, Plaintiffs have pleaded both punitive damages and attorney's fees as part of the damages they suffered. None of those claims are frivolous given the alleged conduct of Defendant. Thus, in considering the alleged amount suffered as damages pursuant to those claims, Plaintiffs have met the jurisdictional amount requirement. Additionally, the Kentucky Consumer Protection Act explicitly allows for recovery of attorney's fees and requires cases be brought in [C]ircuit [C]ourt.

R. at 279-80. Neither the motion to dismiss nor the Trial Court's order denying said motion addressed the issue of whether paying an impound fee constituted a purchase of services as required under the KCPA.

Almost one year later, on April 4, 2023, Vehicle Owners filed an amended complaint expanding the Class Period and clarifying the definition of the Class as follows: "All individuals who paid impound fees to the Defendant for the release of vehicles that were towed and/or impounded by Defendant in Jefferson County, Kentucky from June 11, 2012, to November 16, 2021." R. at 299. After further discovery, Vehicle Owners modified the Class definition as follows: "All individuals who paid impound fees to the Defendant for the release of vehicles that were towed and/or impounded *from a private lot* by the Defendant in Jefferson County, Kentucky from June 11, 2012[,] to November 16, 2021." R. at 1220 (emphasis added).

Several months later, on July 27, 2023, Vehicle Owners renewed their motion to certify the Class. By Memorandum and Order issued on December 7,

2023, the Trial Court granted Class certification. R. at 402-17. The Trial Court specifically held that Vehicle Owners had "defined a Class in such a manner that the inclusion in the Class may be determined by . . . objective criteria" and that "the manner in which [Dave's Towing] operated its impound business is a single course of conduct from which liability will be determined, such that common issues predominate over individual issues in this action." R. at 415, 417. Further, the Trial Court held that the putative Class was "sufficiently large that joinder of all members is impracticable" and that Vehicle Owners' counsel had sufficient experience to prosecute the case on behalf of the Class. R. at 416. Finally, in granting the Class certification, the Trial Court found that "[t]he measure of damages attributable to each impound performed by [Dave's Towing] from June 11, 2012, to November 16, 2021, and the lack of other litigation concerning the manner in which [Dave's Towing] impounds vehicles makes class certification the superior method of adjudication." R. at 417.

Almost six months later, on January 3, 2024, Dave's Towing attempted to appeal the Class certification. The appeal having been filed outside of the ten days required for a notice of appeal, this Court directed Dave's Towing to show cause why the appeal should not be dismissed as untimely. Dave's Towing failed to file a timely response to our show cause Order, and on March 12, 2024, this Court dismissed the appeal as untimely.

Upon dismissal of the appeal and with the Class certification otherwise unchallenged, the underlying litigation proceeded with discovery. In interrogatories, Dave's Towing cited CR 8[3] and asked Vehicle Owners to "identify and list, with specificity, the amount of compensatory damages that you are seeking in this action, and the method of calculation." *See* Stefan Gearhart's Answers to Defendant's First Set of Interrogatories (Feb. 7, 2025), Exhibit 4 to Appellee's/Cross-Appellant's Brief. In response, Gearhart identified his individual compensatory damages as $138,[4] the impound fee that Dave's Towing charged him to release his vehicle, and "no more than $2,228,306 in class-wide compensatory damages which reflects all impound fees charged by Dave's Towing during the class period." *Id.*; *see also* Video Record ("V.R."), 6/5/25 11:21:02. O'Loughlin's response to the same interrogatory was neither filed of record nor introduced by either party. O'Loughlin testified that he incurred $213 in damages.

The Trial Court scheduled a jury trial for June 3, 2025. On March 19, 2025, the Trial Court approved Vehicle Owners' pre-trial notice plan, ordering

[3] Although Dave's Towing did not cite the rule with specificity, CR 8.01(2) provides, in relevant part, as follows: "When a claim is made against a party for unliquidated damages, that party may obtain information as to the amount claimed by interrogatories. If this is done, the amount claimed shall not exceed the last amount stated in answer to interrogatories; provided, however, that the trial court has discretion to allow a supplement to the answer to interrogatories at any time where there has been no prejudice to the defendant."

[4] Ordinance § 115.451 establishes fee limits for impounds "of not more than $138 for removal and the first 24 hours of storage, and up to but not more than $25 per calendar day thereafter."

them to publish a "short[-]form notice in an advertisement in the Courier Journal that shall run from April 13, 2025[,] to April 27, 2025." R. at 1334.

On May 1, 2025, on Vehicle Owners' motion, the Trial Court granted partial summary judgment on the sole issue of whether Dave's Towing had violated the Ordinance by refusing to accept credit card payments for impound fees. Finding that the Ordinance, specifically § 115.457(B), required that Dave's Towing "unequivocally" and "without exception" accept all commercially reasonable tender, including credit card payments, the Trial Court held that Dave's Towing breached the Ordinance as a matter of law. R. at 1361. Accordingly, the Trial Court concluded that there were no genuine issues of material fact on that issue and that "Plaintiffs [were] entitled to judgment as a matter of law with respect to liability on this issue." *Id.* The Trial Court did not state whether "Plaintiffs" meant O'Loughlin and Gearhart only or if partial summary judgment included the Class. The Trial Court did hold that there were genuine issues of material fact as to Vehicle Owners' other claims, including whether Dave's Towing violated the KCPA. "The evidence presently in the record does not show that [Dave's Towing] willfully charged Plaintiffs impound fees for the release of their vehicles, which constituted 'unlawful, unfair, false, misleading, or deceptive acts.'" R. at 1364-65. Again, the Trial Court did not address the issue of whether,

as a matter of law, the payment of an impound fee resulting from a tow constituted a purchase of services under the KCPA.

Shortly before trial, the Trial Court considered several evidentiary motions, including Vehicle Owners' motion to take judicial notice of the contents of websites for the offices of the Secretary of State ("SOS") and the Jefferson County Property Valuation Administrator ("PVA"), for use at trial. The Trial Court granted the motion, taking judicial notice that the SOS and PVA records "are what they purport to be." R. at 1391. However, the Trial Court explicitly held that it could not "interpret those records for the jury and declare that a specific owner is a public or private entity." R. at 1391-92. Rather, the Trial Court explained that it remained Vehicle Owners' burden "to prove to the jury, either through a witness or by persuading the jury to make their own decision based on the plain language of the documents, that a property from which cars were removed is private property." *Id.*

At trial, O'Loughlin and Gearhart testified regarding their individual experiences with Dave's Towing and their incurrence of actual damages in the amounts of $213 and $138, respectively. Despite having issued pre-trial notice to the Class, Vehicle Owners neither identified for the record nor called as witnesses any other presumptive Class members.

Instead, they sought the testimony of two Louisville Metro employees, who testified that Dave's Towing routinely reported by telephone its tows to the Louisville Metropolitan Police Department ("LMPD"), which logged the information received into a database management system. Those employees also authenticated and explained an LMPD spreadsheet, listing the tows that Dave's Towing reported during the Class Period. The spreadsheet identified Dave's Towing as the requesting tow operator, listed the addresses from which and to which the vehicle was towed, and included the date and time of the tow. The spreadsheet did not list the vehicle identification numbers or the Vehicle Owners' names but did generate unique identifiers for each vehicle towed that could then be generated from the LMPD database. Finally, the spreadsheet did not distinguish whether the addresses listed for the tows were from private or public parking lots.

At trial, Jones testified that his company conducted impound tows during the Class Period and through the date of the trial and charged affected owners the maximum rate for removal permitted under Ordinance § 115.451. He confirmed that he had active contracts with many private, commercial businesses, only some of which he provided in discovery. When confronted with his deposition and a prior lawsuit, Jones admitted that he understood the specific requirements of the Ordinance but did not follow it. He stated that Dave's Towing

conducted impounds in Louisville "by the way they tell us to do." V.R., 6/4/25 at 11:48:45-11:49:01.[5]

When asked about whether his company towed vehicles for "any public entities" other than the fairgrounds, airport, and local police departments identified in his deposition, Jones stated that Dave's Towing had a contract with "the Housing Authority." V.R., 6/4/25 at 11:56:53-11:57:48. Further, he explained that the Housing Authority had "over 2,000 places, and [Dave's Towing] towed for every one of them." V.R., 6/4/25 at 11:57:55-11:58:04. He characterized these impounds as "public tows" from Housing and Urban Development ("HUD") or Section 8 properties but did not dispute that tax records could show other residential and commercial non-public properties that were owned by privately-held businesses. V.R., 6/4/25 at 11:59:37-50, 12:25:40-12:26:15; V.R., 6/5/25 at 2:38:20-40.

Pursuant to the Trial Court's evidentiary order, Vehicle Owners offered the records from the SOS and PVA websites as evidence establishing the ownership of properties listed on the LMPD spreadsheet, which were predominantly identified as limited-liability companies, with some individual

[5] We note that the record reflects that Jones was consistently belligerent with opposing counsel and patently defiant about following the Ordinance. He also provided conflicting answers in both his deposition and trial testimony regarding whether he was required to or did in fact accept credit cards and maintain records.

owners or trusts. In addition to the properties' owners' names, the records showed property tax classifications (*e.g.*, residential apartments, commercial retail, or offices). The Trial Court had already taken some judicial notice of these websites of government records, but not for every purpose sought; and Vehicle Owners did not call a witness to testify regarding the SOS and PVA records.

At the close of Vehicle Owners' case, Dave's Towing moved for directed verdict, arguing that the KCPA did not apply because Vehicle Owners did not purchase goods or services from Dave's Towing. Further, it argued that even if the KCPA did apply, Vehicle Owners failed to prove any false, misleading, or deceptive practices and neglected to make proper damage claims under the KCPA as required by CR 8. V.R., 6/4/25 at 2:09-2:11, 2:14-15, 3:02:45-3:03:59. In response, Vehicle Owners argued that "forced purchases" were still purchases, and that Dave's Towing's charging of impound fees, when it was not permitted to so under the provisions of the Ordinance, constituted an unfair and deceptive practice. V.R., 6/4/25 at 2:12:30-40, 3:04:00-21. Finding that Vehicle Owners did not purchase services from or employ Dave's Towing, as defined by the KCPA, the Trial Court granted a directed verdict against Vehicle Owners as to their claims under the KCPA. V.R., 6/4/25 at 3:05:02-3:07:24.

After the Trial Court dismissed the KCPA claim, Dave's Towing moved for a directed verdict and dismissal of all claims for lack of subject-matter

jurisdiction. Citing CR 12.02(c), Dave's Towing argued that, upon dismissal of the KCPA claim, the Vehicle Owners' claims for damages, which were limited to $138 per representative or presumptive plaintiff, fell well below the statutory jurisdictional prerequisite of $5,000. Further, Dave's Towing asserted that subject-matter jurisdiction could not be waived and, if in question, must be addressed at any stage of the proceedings, even on appeal. V.R., 6/4/25 at 3:07:35-3:10:48; 6/5/25 at 10:15:15-10:18:08, 10:20:25-10:21:35. Vehicle Owners countered that because the Trial Court had "original" subject-matter jurisdiction when it certified the Class, it could not later be divested of such jurisdiction once the parties reached trial. V.R., 6/4/25 at 3:19:30-3:20.

After reviewing relevant case law and considering the oral arguments of the parties, the Trial Court declined to dismiss the remaining claims. It reasoned that the Vehicle Owners were required to bring their KCPA claim in Circuit Court, specifically stating that "at the time of the [Class] certification, it had to be in here." V.R., 6/4/25 at 3:23:47-51. And despite recognizing that it "could transfer the case to District Court," it ultimately declined to do so. *Id.* at 3:24:25-30. Moreover, when asked to reconsider its reasoning, the Trial Court stated:

> If you will find me one case where something similar has happened; where the predicate to getting to Circuit Court goes away based on the proof, and therefore, in mid-trial, all other claims which may be viable but would not ordinarily come to Circuit Court just go away because the Court somehow in the middle of trial lost jurisdiction,

> then I will reconsider that. But . . . once jurisdiction is established in Circuit Court, I don't think I lose it mid-trial because the count that mandated it be here fails on the proof.

V.R., 6/5/25 at 10:18:52-10:19:42. The Trial Court recognized that the issue of subject-matter jurisdiction was "murky," and having been preserved, likely would be appealed, and that the entirety of the complicated case, which had persisted for many years, "will give an appellate court quite a bit to chew on." V.R., 6/5/25 at 10:26:45-10:27:25. Nonetheless, it denied the motion to dismiss the remaining claims.

At this point in the appeal, we must note that it is unfortunate that many of the arguments and the rulings were made orally. While the Trial Court could have requested pretrial, written briefing from the parties on the fine points of jurisdiction, dismissal, and transfer, and then issued a written Opinion and Order, it did not. In our thorough review of the record, we have uncovered snippets of discussions between the Trial Court and counsel for the parties indicating their awareness of the significance of the jurisdictional issue prior to trial and of the potential for transfer of the case to District Court for trial.

For its case, Dave's Towing recalled O'Loughlin, Gearhart, and Jones. Additionally, a representative from the Jefferson County Clerk's Office testified that the office routinely provided owner and lien-holder information to tow operators, including Dave's Towing. However, the Clerk's office is only open

on weekdays, Mondays through Fridays, from 8:00 a.m. to 4:30 p.m. Because tow operators are required to notify the Clerk pursuant to Ordinance § 115.455, the Clerk permitted tow operators to report their tows by email or fax at any point in time, including on the weekends and after hours. The Clerk then processes those requests the next business day. The representative also testified that Dave's Towing contacted the Clerk almost daily to seek information regarding owners and lien-holders. V.R., 6/5/25 at 3:00-3:05. Finally, Dave's Towing called a manager from Sergio's, who testified regarding its former contract with Dave's Towing and its methods of contact for towing vehicles illegally parked in its private parking lot. V.R., 6/5/25 at 3:06-3:13.

After the close of all of the evidence, Dave's Towing renewed its motion for a directed verdict and moved to decertify the Class. V.R., 6/5/25 at 3:15. Specifically, Dave's Towing argued that Vehicle Owners failed to establish that the damages suffered by the purported Class members were sufficiently common as to support the continuation of the certification of the Class and failed to present competent evidence for the jury to determine damages without speculating as to which tows originated from private properties. V.R., 6/5/25 at 3:15-21, 3:26. Additionally, Dave's Towing renewed its assertion that the Trial Court lacked subject-matter jurisdiction. V.R., 6/5/25 at 3:21:09-49. Vehicle Owners also moved for their own directed verdict based on the Trial Court's partial

summary judgment finding Dave's Towing liable for failing to accept credit card payments as well as evidence that Dave's Towing did not obtain contemporaneous written authorizations for its tows. V.R., 6/5/25 at 3:22:20-3:23:22. Alternatively, Vehicle Owners asked the Trial Court to submit the matter to the jury for a determination of damages based on the LMPD spreadsheet and the records from the SOS and PVA websites. V.R., 6/5/25 at 3:23:23-3:25:34.

After considering the parties' arguments, the Trial Court granted a directed verdict in favor of Dave's Towing as to the Class-wide claims but granted a separate, contemporaneous directed verdict awarding damages to O'Loughlin and Gearhart on their individual claims as to Dave's Towing's violation of the Ordinance's requirement that it accept credit card payments. V.R., 6/6/25 at 9:27-9:34. In its written Order, the Trial Court restated that it refuted and denied Dave's motion on the grounds that it lacked subject-matter jurisdiction, referencing the "reasons set out in detail on the record." R. at 1470. It also declined to address whether to decertify the Class. R. at 1471. Rather, it granted the motion for directed verdict on the basis that Vehicle Owners did not meet their burden to prove that "the thousands of cars towed by [Dave's Towing] between June 11, 2012[,] and November 16, 2021[,] were towed from private properties as required by law." R. at 1470, 1473.

In addition to the question regarding whether HUD properties were

public parking lots, the Trial Court held that "[e]ven if every listed property for which documents have been provided is private, there is not sufficient evidence in the record from which each juror could make that determination. . . . Without evidence in the record, not just to the ownership, but whether that ownership is public or private, a juror is required to speculate or to rely on another juror's knowledge or opinion, neither of which is permitted." R. at 1473. Significantly, the Trial Judge orally communicated on the record that it welcomed an appeal, because the case was "replete with issues on both sides that [the Trial Judge] would love to see published law on." V.R., 6/6/25 at 9:48:19-31.

On appeal, Vehicle Owners argue that the Trial Court erred by issuing orders with contradictory results, considered information outside of the record when it independently referenced www.hud.gov, and improperly substituted its own assessment of the evidence for the jury's as to whether the locations from which Dave's Towing impounded vehicles were private parking lots. Dave's Towing asks this Court to affirm the directed verdict in its favor as to the Class based on all the grounds it argued below, including that the Trial Court lacked subject-matter jurisdiction. Dave's Towing also cross-appeals the Trial Court's independent, directed verdict awarding O'Loughlin and Gearhart damages on their individual claims, arguing that, once the Trial Court ruled that the KCPA did not apply, the Trial Court lacked subject-matter jurisdiction over the remaining

municipal-ordinance claims.

II. RULES OF APPELLATE PROCEDURE

Before proceeding to the merits, we must address both parties' failures to provide preservation statements in their respective briefs. A failure to comply substantially with the Kentucky Rules of Appellate Procedure ("RAP") can be grounds for sanctions as we deem appropriate. RAP(10)(B). Specifically, RAP 32(A)(4) and, by extension, RAP 32(C)(1), provide that an appellant or cross-appellant's opening brief "contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." Our Supreme Court has "strictly mandated compliance with this rule since its inception. . . ." *Gasaway v. Commonwealth*, 671 S.W.3d 298, 310 (Ky. 2023) (citing *Skaggs v. Assad, By & Through Assad*, 712 S.W.2d 947, 950 (Ky. 1986)). Further, "[i]t goes without saying that errors to be considered for appellate review must be precisely preserved and identified in the lower court." *Id.*

The issues presented in this combined appeal and cross-appeal are significantly intertwined, and the parties' failures to include a preservation statement regarding each issue necessarily frustrates our review. Moreover, as the parties' motions for directed verdict were presented orally to the Trial Court, they did not preserve their arguments in writing. The lack of a written record of many

of the arguments presents the exact reason that our "[a]ppellate procedural rules, including those for briefing, cannot be ignored by appellate advocates." *White v. Fowler*, 717 S.W.3d 176, 180 (Ky. App. 2025).

Because the rule violations occurring here are less egregious than in other recent cases, we decline to impose more stringent sanctions at this time, but issue an admonishment, coupled with strong caution, to expect no such continued leniency in the future. Additionally, we have arranged our analysis of the multiple issues raised in the appeal and cross-appeal in such a manner and order to address them most efficiently. "We have considered the parties' extensive arguments and citations to authority but will discuss only the arguments and cited authorities we deem most pertinent, the remainder being without merit, irrelevant, or redundant." *Schell v. Young*, 640 S.W.3d 24, 29 n.1 (Ky. App. 2021).

III. STANDARD OF REVIEW

At the conclusion of a jury trial, "a Trial Court may direct a verdict on an issue when there was a 'complete absence of proof on a material issue or if no disputed issues of fact exist upon which reasonable minds could differ.'" *Hamilton v. P.B. Stratton Fam. P'ship, L.L.C.*, 709 S.W.3d 287, 314 (Ky. App. 2024) (quoting *Bierman v. Klapheke*, 967 S.W.2d 16, 18-19 (Ky. 1998) and CR 50.01). "It is well-argued and documented that a motion for a directed verdict raises only questions of law as to whether there is any evidence to support a verdict." *Gibbs v.*

Wickersham, 133 S.W.3d 494, 496 (Ky. App. 2004) (citing *Harris v. Cozatt, Inc.*, 427 S.W.2d 574, 575 (Ky. 1968)).

The matter of whether a Trial Court possesses subject-matter jurisdiction, which we hold is dispositive of this appeal, is reviewed *de novo*. *Appalachian Regional Healthcare, Inc. v. Coleman*, 239 S.W.3d 49, 53-54 (Ky. 2007); *Uninsured Employers' Fund v. Bradley*, 244 S.W.3d 741, 744 (Ky. App. 2007) ("When a court is alleged to be acting outside of its jurisdiction, the standard of review *is de novo*.").

IV. ANALYSIS

The matter *sub judice* presents a series of actions by the parties and decisions by the Trial Court that the parties failed to appeal, appealed untimely, or otherwise neglected to make available for appellate review. Although Dave's Towing repeatedly sought disposition of this action for lack of subject-matter jurisdiction, including a cursory motion for summary judgment in 2018 and an objection to and attempted appeal of the Trial Court's Class certification in 2024, its motions offered little to no legal support and were either unpersuasive or untimely. Notably, Dave's Towing could have sought a writ of prohibition but failed to do so. *See, e.g.*, *Imhoff v. House*, 628 S.W.3d 88, 92 (Ky. 2021) (in the context of a class action, where a "a lower court is proceeding or is about to proceed outside of its jurisdiction . . . [a] writ action [may be] correctly initiated in

the Court of Appeals"). Consequently, Vehicle Owners' claims persisted through years of unnecessary litigation, which encompassed multiple, unsuccessful attempts to reach their goals, including two chances to certify the class action.

For its most significant argument on appeal, Dave's Towing asserts that the Trial Court lacked subject-matter jurisdiction from the initiation of the class action. Because it did not seek an appellate ruling to stop the trial on that ground, Dave's Towing now requests that we *affirm* the Trial Court's directed verdict dismissing Vehicle Owner's KCPA claim; *reverse* the Trial Court's decisions during the trial, namely, the finding that it retained subject-matter jurisdiction after dismissing the KCPA claim; decertify the Class; and dismiss all of the Vehicle Owners' Class-wide and individual claims.[6] Its comprehensive request for remedy is perplexing, as it could, and should, have requested that we nullify all of the Trial Court's actions taken outside its jurisdiction as void *ab initio*.

A. Subject-Matter Jurisdiction

"It is fundamental that a court must have jurisdiction before it has authority to decide a case. Jurisdiction is the ubiquitous procedural threshold

[6] Dave's Towing did not request that the Circuit Court transfer O'Loughlin's and Gearhart's individual claims, which were under the jurisdictional limit, to District Court, where they could have been properly adjudicated. *See infra* discussion regarding the circumstances and timing that Circuit Court should transfer a case to District Court rather than dismissing.

through which all cases and controversies must pass prior to having their substance examined." *Basin Energy Co. v. Howard*, 447 S.W.3d 179, 184 (Ky. App. 2014) (citing *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005)). The Kentucky Supreme Court has held that "an alleged lack of subject-matter jurisdiction is one of those issues that 'may be raised at any time, even by the court itself.'" *Commonwealth v. Steadman*, 411 S.W.3d 717, 721 (Ky. 2013) (quoting *Kentucky Employers Mut. Ins. v. Coleman*, 236 S.W.3d 9, 15 (Ky. 2007)).

Subject-matter jurisdiction refers to a "court's power to hear and rule on a particular type of controversy." *Nordike v. Nordike*, 231 S.W.3d 733, 737 (Ky. 2007). In other words,

> a court is deprived of subject matter jurisdiction only where that court has not been given, by constitutional provision or statute, the power to do anything at all. To determine subject matter jurisdiction, the pleadings should be examined and taken at face value. The court has subject matter jurisdiction when the "kind of case" identified in the pleadings is one which the court has been empowered, by statute or constitutional provision, to adjudicate.

Daugherty v. Telek, 366 S.W.3d 463, 467 (Ky. 2012); *see also Louisville Hist. League, Inc. v. Louisville/Jefferson Cnty. Metro Gov't*, 709 S.W.3d 213, 221 (Ky. 2025). Moreover, the Kentucky Supreme Court has explained that:

> Subject-matter jurisdiction must be determined without resort to particular-case factual inquiries. The parties' actions in the litigation cannot confer subject-matter jurisdiction or take it away once it has been properly

> established. *Subject-matter jurisdiction either exists or it does not.* "Once a court has acquired subject matter and personal jurisdiction, challenges to its subsequent rulings and judgment are questions incident to the exercise of jurisdiction rather than to the *existence* of jurisdiction."

S.I.A. Ltd., Inc. v. Wingate, 677 S.W.3d 487, 496 (Ky. 2023) (emphasis added) (quoting *Basin Energy Co.*, 447 S.W.3d at 184 (footnote and citations omitted)).

The timing of the determination of subject-matter jurisdiction is also significant. To wit,

> [w]hether a court has subject matter jurisdiction is determined *at the beginning of a case*, based on the type of case presented. General subject matter jurisdiction should be determinable from the face of the charging document (the indictment) or other initial pleading (the complaint). Thus, a court "will retain jurisdiction over such a case so long as jurisdiction was proper in the first place."

Steadman, 411 S.W.3d at 722 (emphasis added) (citing *Leonard v. Commonwealth*, 279 S.W.3d 151, 156 (Ky. 2009)). "And, perhaps most important to the present dispute, any order entered by a court acting without subject matter jurisdiction is void from its inception." *Officer v. Blankenship*, 555 S.W.3d 449, 455 (Ky. App. 2018). The stark reality is that, "[w]here judicial tribunals have no jurisdiction of the subject-matter on which they assume to act, their proceedings are absolutely void in the strictest sense of the term[.]" *Davis v. Ward*, 227 Ky. 634, 13 S.W.2d 782, 783 (1929).

Moreover, a Circuit Court that determines that it lacks subject-matter jurisdiction has the discretion, if not the obligation, to transfer to the District Court any remaining claims properly within that Court's jurisdiction. *See, e.g.*, *Abell v. Reynolds*, 191 S.W.3d 1, 3 (Ky. App. 2006) (after Circuit Court judgment was vacated for lack of subject-matter jurisdiction, plaintiff's common law theories, if any, may be addressed in District Court); *Jackson v. Commonwealth*, 806 S.W.2d 643, 646 (Ky. 1991) (when felony dismissed, Circuit Court should have immediately remanded misdemeanor to District Court); *Mullins v. First American Bank*, 781 S.W.2d 527, 529 (Ky. App. 1989) (after finding that it lacked subject-matter jurisdiction, Circuit Court erred by dismissing probate matter rather than transferring it to District Court).

Here, Vehicle Owners premised the jurisdiction for their complaint on two rationales. First, they relied on KRS 367.220, which provides in relevant part:

> Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by KRS 367.170, may bring an action under the Rules of Civil Procedure in the Circuit Court in which the seller or lessor resides or has his principal place of business or is doing business, or in the Circuit Court in which the purchaser or lessee of goods or services resides, or where the transaction in question occurred, to recover actual damages. The court may, in its discretion, award actual damages and may provide such equitable relief as it deems necessary or

> proper. Nothing in this subsection shall be construed to limit a person's right to seek punitive damages where appropriate.

Second, the Vehicle Owners argued that the Class suffered unliquidated damages resulting from Dave's Towing's violations of the Ordinance, which permits them to "seek monetary recovery for an improperly towed vehicle by filing a civil action *in a court of competent jurisdiction*." Ordinance § 115.453 (emphasis added).

After the close of Vehicle Owners' proof, the Trial Court expressly dismissed the KCPA claims, finding that neither O'Loughlin and Gearhart nor the presumptive Class members purchased goods or services from or employed Dave's Towing. However, the Trial Court believed that it had acquired subject-matter jurisdiction based on the complaint, and it then certified a class action, holding that a failure of proof could not operate to divest it of said jurisdiction. It also concluded, ultimately, that it lacked the authority to transfer O'Loughlin and Gearhart's individual claims to District Court, thereby depriving them of a remedy.[7] We are not so persuaded.

[7] Appellee suggested that the Trial Court could transfer the remaining claims to District Court but did not formally move for this remedy. Although the Trial Court stated on the record that transferring the matter to District Court may be an option, it ultimately chose not to do so. While it did not discuss the option of transfer in its written Order granting O'Loughlin and Gearhart a direct verdict on their personal claims, the Trial Court appeared to be concerned that O'Loughlin and Gearhart would not have the right to *file* their claims anew in District Court. It should have been asked to rule specifically on the issue of *transferring* the existing litigation.

B. KCPA

First, "to determine subject matter jurisdiction [under the KCPA], the pleadings should be examined and taken at face value." *Daugherty*, 366 S.W.3d at 467. We have examined Vehicle Owners' complaint and amended complaint. Those pleadings theorize that the KCPA applies because Vehicle Owners and the Class "purchased 'services' from [Dave's Towing], i.e. the towing, storage, and release of their respective vehicles" and "were compelled to purchase these 'services' notwithstanding [Dave's Towing's] violation of the [Ordinance]." R. at 8-9. However, the transaction described on the face of Vehicle Owners' pleadings is not the type of transaction governed by the KCPA as a matter of law.

The KCPA is "remedial legislation enacted to give consumers broad protection from illegal acts." *Skilcraft Sheetmetal, Inc. v. Kentucky Mach., Inc.*, 836 S.W.2d 907, 909 (Ky. App. 1992). Specifically, "KRS 367.170(1) provides that '[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.' Subsection (2) further provides, '[f]or the purposes of this section, unfair shall be construed to mean unconscionable.'" *Red Bird Motors, Inc. v. Endsley*, 657 S.W.2d 954, 956 (Ky. App. 1983). Generally, Courts apply the KCPA in a manner that "give[s] Kentucky consumers the broadest possible protection for allegedly illegal acts." *Stevens v. Motorists Mut. Ins. Co.*, 759 S.W.2d 819, 821 (Ky. 1988).

In *Skilcraft*, this Court considered as a matter of first impression "whether KRS 367.220 . . . allows an action by a person who has not purchased or leased goods or services from the person he claims to have violated the [KCPA]." 836 S.W.2d at 909. Finding that the KCPA did not apply, we held that "[t]o maintain an action alleging a violation of the [KCPA], however, an individual must fit within the protected class of persons defined in KRS 367.220[,]" and that "privity of contract [must] exist between the parties[.]" *Skilcraft*, 836 S.W.2d at 909.

Kentucky's Courts have shown great reluctance to extend the KCPA beyond a direct transaction for consumer goods. *See, e.g.*, *Red Bird,* 657 S.W.2d at 956 (reversing judgment under the KCPA for car dealership's failure to transfer car registration papers within ten days of sale, in violation of statute, and dealership's subsequent seizure of vehicle, where plaintiff failed to prove specific damages); *Miles v. Shauntee*, 664 S.W.2d 512, 518-19 (Ky. 1983) (KCPA did not apply to a landlord who fails to comply with local code provisions); *Craig v. Keene*, 32 S.W.3d 90, 91 (Ky. App. 2000) (KCPA did not apply to real estate transactions by an individual homeowner); *Bell v. Kokosing Indus., Inc.*, No. CV 19-53-DLB-CJS, 2020 WL 4210701, at *27 (E.D. Ky. Jul. 22, 2020)[8] (KCPA did not apply to an

[8] We cite to this unpublished opinion pursuant to RAP 41(A) as demonstrative, non-binding authority.

agreement for the transfer of construction materials from one site to another, which was not an agreement for the purchase or lease of consumer goods and created no privity of contract).

We find this case most similar to *Miles*, in which the Kentucky Supreme Court held that a landlord's "violation of a housing code [did] not create a cause of action in favor of the tenant" under the KCPA. 664 S.W.2d at 518. Specifically, our highest Court held that a code violation was not "deceptive in the absence of an express covenant or agreement that the landlord would comply with such housing code." *Miles*, 664 S.W.2d at 519. Similarly, as the Trial Court here properly determined, Dave's Towing's violations of the Ordinance did not create a KCPA claim, because the Act expressly requires the purchase or lease of consumer goods or services. *See, e.g.*, *Craig v. Keene*, 32 S.W.3d 90, 92 (Ky. App. 2000) (Combs, J., concurring). There being no direct consumer transaction, agreement, or privity of contract between the Vehicle Owners and Dave's Towing, we uphold the Trial Court's ruling that the KCPA does not apply *as a matter of law*.

However, unlike the Trial Court, we do not discern that the lack of subject-matter jurisdiction resulted from Vehicle Owners' failure of proof. Rather, taken at face value, Vehicle Owners' complaint pled conduct, specifically violation of the Ordinance, which is municipal and not governed by the KCPA. While Vehicle Owners' complaint likened the towing fees to compelled purchases for

services, the facts that they pled, even if proven, did not allege any *direct* consumer relationship with Dave's Towing, thereby failing to trigger the KCPA as a matter of law. And, during oral argument, counsel for Vehicle Owners stipulated to this fact, agreeing that there was no binding authority holding that a claim that does not involve a purchase of goods would fall under the KCPA and stating that they "were not fighting that point on appeal." Additionally, counsel conceded the very point that we are making, when he stated: "Jurisdiction is not a result-based issue. It is a threshold issue about whether the case is properly before the Court in the first place." Therefore, by the Vehicle Owners' own admissions, from its inception, this action was not the "kind of case" that the KCPA has empowered the Trial Court to adjudicate. *Daugherty*, 366 S.W.3d at 467. Put another way, subject-matter jurisdiction under the KCPA was not proper from the face of the initial pleading. *Steadman*, 411 S.W.3d at 722. And, importantly, the insertion of a meritless KCPA claim into a pleading does not operate to bestow Circuit Court jurisdiction by itself.

C. Towing Ordinance

We also find that the Ordinance did not create a cause of action sufficient to confer subject-matter jurisdiction. Pursuant to § 115.453 of the Ordinance, persons violating its terms "shall be liable to the vehicle owner for any amounts actually paid for the tow, transportation, and storage of the vehicle, as

well as for any damage to the vehicle resulting therefrom." The Ordinance does not provide for punitive damages. And it does not provide for attorneys' fees. Further, Ordinance § 115.459 states that "a motor vehicle owner may seek monetary recovery for an improperly towed vehicle by filing a civil action in *a court of competent jurisdiction*." (Emphasis added.) The Ordinance, therefore, creates a right of action and authorizes only actual compensatory damages but does not and cannot, itself, confer subject-matter jurisdiction.

"In Kentucky, circuit courts are courts of 'general jurisdiction,' which means that circuit courts 'shall have original jurisdiction of all justiciable causes not vested in some other court.'" *Commonwealth Fin. & Admin. Cabinet v. Wingate*, 460 S.W.3d 843, 848 (Ky. 2015), *as modified* (May 14, 2015) (quoting *Davis v. Wingate*, 437 S.W.3d 720, 725 (Ky. 2014), KY. CONST. § 112(5)). Under Kentucky's Constitution, "[t]he district court shall be a court of limited jurisdiction and shall exercise original jurisdiction as may be provided by the General Assembly." KY. CONST. § 113(6). Following this constitutional authorization, the Kentucky legislature has established that "District Court shall have exclusive jurisdiction in: (1) [c]ivil cases in which the amount in controversy does not exceed five thousand dollars ($5,000), exclusive of interests and costs, except . . . matters of equity[.]" KRS 24A.120(1). Therefore, for original jurisdiction to vest in the Jefferson Circuit Court as a result of a municipal violation of the Ordinance,

Vehicle Owners and the Class were required to have at least one plaintiff whose "monetary recovery for an improperly towed vehicle" exceeded $5,000. Ordinance § 115.459.

Moreover, the Kentucky Supreme Court has held explicitly that plaintiffs bringing class actions shall not aggregate the claims of named plaintiffs and unnamed Class members in order to achieve the $5,000 jurisdictional prerequisite. *Imhoff*, 628 S.W.3d at 93. As that Court explained, implicit in its prior holdings concerning whether a class action is appropriate "is the requirement that a trial court have subject matter jurisdiction over *at least* one claim." *Id.* at 92 (citing *Hensley v. Haynes Trucking, L.L.C.*, 549 S.W.3d 430, 439 (Ky. 2018)). Unlike *Imhoff*, in which this Court issued a writ prohibiting that Trial Court from proceeding without jurisdiction, Vehicle Owners managed to achieve Class certification despite failing to "satisfy the amount-in-controversy requirement prescribed by the legislature." *Imhoff*, 628 S.W.3d at 93. Even after issuing class notice, Vehicle Owners could not produce one single plaintiff whose damages exceeded the presumed-maximum, impound fee of $138, a sum far below the jurisdictional prerequisite. Still, if Dave's Towing charged other individuals with sums exceeding $138 for additional days of storage, like O'Loughlin and his $213, Vehicle Owners failed to identify any such Class members or otherwise present non-speculative evidence regarding the amount of their actual damages.

Despite its own review of *Imhoff* and related case law, the Trial Court struggled with divestiture of jurisdiction, opining that to deny its own jurisdiction after a near-completed jury trial would deny Vehicle Owners a remedy. The holding in *Imhoff* rejects this concern and its attempted encroachment on the separation of powers that are exclusively those of the legislative branch:

> Barring class actions which do not meet the circuit court's amount-in-controversy requirement does not leave the plaintiffs without an adequate and proper remedy. The . . . argument that legal costs and accessibility functionally prohibit potential class members from filing individual, small-dollar suits, could likewise be made for all plaintiffs seeking damages in the district court. And yet, the legislature not unreasonably gave the district court exclusive jurisdiction over civil cases in which the amount in controversy does not exceed five thousand dollars. Expansion of subject-matter jurisdiction is completely within the purview of the legislature.

628 S.W.3d at 94. And, as we explain *supra*, the Circuit Court should have transferred this matter to District Court prior to reaching trial. *See, e.g.*, *Jackson v. Commonwealth*, 806 S.W.2d at 645-46 ("This case provides a perfect example of one being unable to see the forest for the trees . . . . [H]ad the parties reviewed the entire record, the constitution, and statutes enacted pursuant thereto, this matter would have never gotten out of . . . District Court.").[9]

[9] There appears to be no published authority authorizing an Appellate Court to transfer a matter to District Court directly; however, upon remand, we may direct the Trial Court to correct its error in failing to recognize and order such transfer.

Additionally, we are not persuaded by Vehicle Owners' citation to *Ogborn v. Earl Floyd Ford-Mercury, Inc.*, which is unpublished, non-binding authority and distinguishable from the case *sub judice*. No. 2006–CA–001226–MR, 2007 WL 2812593 (Ky. App. Sep. 28, 2007).[10] In *Ogburn*, the plaintiff purchased a used vehicle from a car dealership only to discover later that the dealership had included an extended service plan in his contract without his knowledge or consent. *Id.* at *1. In his complaint, Ogborn pled facts, which if proven, clearly fell within the protection of KCPA; to wit, that he purchased a vehicle directly from the dealership and that the dealership added the service plan without his knowledge or assent, thereby engaging in deceptive and fraudulent acts. *Id.* He sought compensation for the $1,420 the dealership charged for the service plan, as well as pain and suffering, and punitive damages in excess of the jurisdictional minimum. *Id.* Based on contract law as well as the application of the KCPA, the Circuit Court entered summary judgment, dismissing some of Ogborn's damages claims and thereby reducing the sum in controversy to an amount under the jurisdictional threshold. As a result, the Circuit Court transferred Ogborn's case to District Court. *Id.*

On appeal, this Court held that the Circuit Court's reasoning in

[10] Vehicle Owners cite to this unpublished opinion pursuant to RAP 41(A) as demonstrative, non-binding authority.

transferring the case to District Court was erroneous, because "[o]nce a court acquires jurisdiction, it is generally recognized that such jurisdiction cannot be lost or defeated by subsequent events." *Id.* However, that appellate panel specifically opined the following:

> Ogborn prayed for damages in excess of $4,000.00. Clearly, the circuit court's subsequent dismissal of certain damage claims did not divest the circuit court of jurisdiction. Hence, we are of the opinion that the circuit court improperly concluded that it "lost" jurisdiction over the case and improperly transferred the case to district court.

Id. at *2. Conversely, in this matter, Vehicle Owners' complaint failed to plead either (1) facts, which if proven, would have triggered application of the KCPA, including punitive damages, as discussed *infra*, or (2) *specific* damages in excess of $5,000 for at least one plaintiff. Significantly, Vehicle Owners never pled any consumer relationship in their complaint. Also importantly, the Trial Court did not just dismiss Vehicle Owners' claim for punitive damages but rather dismissed their KCPA claim entirely and as a matter of law.

In another unpublished decision, we discussed this distinction within the context of our more recent and controlling authority:

> While we agree that *Jackson* holds that the [plaintiffs] were not required to put forward evidence in their complaint to prove the value of their damage claims, we disagree . . . that *Jackson* authorizes this Court to do anything other than to accept at face value what is pled. Here, again, the [plaintiffs'] complaint did not allege

> with any specificity the value of the damages sought or contain a CR 8.01 statement that the damages exceeded the jurisdictional minimum. Without this information it cannot be determined that any of the claims, aggregated or not, properly invoked the circuit court's jurisdiction. Even accepting that we may look to [plaintiff's] interrogatory responses, the only stated claim for damages was for $4,500.00, which does not meet the jurisdictional threshold. Accordingly, we conclude that the circuit court did not have subject matter jurisdiction, and, in consequence, the court's . . . judgment is void.

Clevenger v. Vonderheide, No. 2023-CA-0993-MR, 2024 WL 4395226, at *3 (Ky. App. Oct. 4, 2024)[11] (citing *Jackson v. Beattyville Water Dep't*, 278 S.W.3d 633, 637 (Ky. App. 2009) (Where plaintiff alleged damages exceeding the jurisdictional prerequisite in her complaint and answer to interrogatories, "for the purpose of conferring jurisdiction, proof of damages [was] not required.")); *see also Hernandez v. Cnty. Invs., L.L.C.*, 696 S.W.3d 832, 836–37 (Ky. App. 2024) ("[F]or jurisdictional purposes, the amount in controversy is determined based on the allegations in the complaint, not what a party is entitled to.").

In sum, we hold that the KCPA does not apply to Vehicle Owners' claims, and thus their complaint could not meet the prerequisites for jurisdiction of the Jefferson Circuit Court based solely on the violations of the Ordinance. Therefore, we hold that the Trial Court did not have subject-matter jurisdiction

[11] We cite to this unpublished opinion pursuant to RAP 41(A) as demonstrative, non-binding authority.

from the inception of this litigation. The Trial Court had no authority to issue a directed verdict, which was void at its inception. The entire eight-year course of the litigation was improper in a Circuit Court. Jurisdiction must be established prior to jury trial. Because that was not done below, we must vacate the verdicts, awards, and judgments in their entirety.

V. CONCLUSION

As the KCPA does not apply to this case as a matter of law, the Circuit Court was required to dismiss that claim. It could have done so prior to trial; having failed in that regard, its directed verdict at trial would have been proper if it had possessed jurisdiction. However, once it issued the verdict on the only claim that purportedly established its jurisdiction, the Circuit Court lacked subject-matter jurisdiction over the rest of this case, and it should have transferred the case to District Court, where the suit should properly have been filed.

For the foregoing reasons, we vacate the Order of the Jefferson Circuit Court issuing a directed verdict in favor of Dave's Towing and the contemporaneous Order of the Jefferson Circuit Court awarding individual damages to O'Laughlin and Gearhart. We remand the case to the Jefferson Circuit Court with directions to transfer the case to District Court, which has jurisdiction, to determine the viability of the other claims.

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