RENDERED: AUGUST 14, 2015; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000402-MR

DAVID GRIFFIN APPELLANT

v.

APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 13-CI-00420

SARAH C. JONES APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, DIXON, AND KRAMER, JUDGES.

KRAMER, JUDGE: David Griffin appeals an order of the Calloway Circuit Court dismissing, pursuant to Kentucky Rules of Civil Procedure (CR) 12.02(f), various causes of action he asserted against Sarah C. Jones. After careful review, we affirm.

Our standard of review is as follows:

> The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. In making this decision, the circuit court is not required to make any factual determinations; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

James v. Wilson, 95 S.W.3d 875, 883–84 (Ky. App. 2002) (internal quotations and footnote omitted). With this standard in mind, we now turn to the facts of this case as alleged in Griffin's complaint.

In early 2008, Charles Jones (Sarah's husband) approached Griffin about investing in Integrated Computer Solutions, Inc. (ICS). Griffin paid $2 million for 50% of ICS's outstanding shares—making Griffin a 50% shareholder, with Mr. Jones owning the other 50%. Sarah Jones was the Secretary of ICS. Charles also formed Blackrock Investments, LLC (BRI), in March 2008. Griffin invested $100,000 in BRI in exchange for a 50% membership interest. BRI, in turn, formed SE Book Company, LLC (SEB)—a member-managed limited liability company—with BRI as its sole member. In July 2008, SEB's operating agreement was amended to add ICS as an 8% member of SEB. Thereafter, Charles formed College Book Rental Company, LLC (CBR), in March 2009. BRI has a 92% interest in CBR, and ICS has an 8% interest in CBR.

In June 2008, Charles also formed CA Jones Management Group, LLC (CJM); he was its sole member (Griffin had no ownership interest in this

entity), and Sarah was its President. CJM was formed to manage the day-to-day operations of ICS, BRI, SEB, and CBR, which included providing human resources, marketing, accounting, technology, and other services. CJM entered into management services contracts to that effect with each of the aforementioned entities, with Charles signing all of the agreements on behalf of all of these entities.

The majority of the business operations among these entities occurred in CBR and SEB. For his part, Griffin's involvement with those entities was limited to being a passive investor. Between 2008 and 2011, Griffin loaned to or invested in these companies approximately $29 million. While Griffin was doing so, however, Charles and Sarah, in their roles as officers of these entities, caused the entities to commingle assets between SEB, CBR, ICS and BRI, and ultimately transfer much of those loaned or invested funds to CJM. While these transfers were ostensibly described as "management fees," CJM provided little or no consideration to the entities in exchange; nor did Charles or Sarah inform Griffin about these transfers. Thereafter, Charles and Sarah caused CJM to pay these funds to themselves for their own personal use.

With that said, this appeal arises from the decision of the circuit court to dismiss four claims Griffin ultimately asserted against Sarah based upon the foregoing. Those claims were: (1) breach of a fiduciary duty owed to him, personally; (2) fraud by omission; (3) misappropriation; and (4) unjust enrichment.

Initially, Griffin takes umbrage with the fact that the circuit court's order dismissed all of his claims against Sarah without explanation. In the absence

of any further specificity we must presume that the circuit court's order was based upon each of the grounds Sarah asserted in her CR 12.02 motion (which are the same grounds that she continues to argue in her appellee brief) and that the circuit court considered and rejected each of the opposing arguments Griffin offered in response. *See, e.g., Sword v. Scott*, 293 Ky. 630, 169 S.W.2d 825, 827 (1943) ("In the absence of the court's specifying the ground or grounds for his dismissal of the petition, it will be assumed that it was upon any or all of the grounds which the proof sufficiently established."); *see also Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 125 (Ky. App. 2012). Thus, if Sarah's CR 12.02 motion asserted any proper grounds for dismissing the claims presented, we must affirm. *See Milby v. Mears*, 580 S.W.2d 724, 727 (Ky. App. 1979) ("[W]hen a judgment is based upon alternative grounds, the judgment must be affirmed on appeal unless both grounds are erroneous.").

And, as discussed below, a proper ground for dismissing the balance of Griffin's claims was his lack of standing.

In general, to invoke the jurisdiction of the court to enforce a claim, a plaintiff must show he has standing to do so. *J.N.R. v. O'Reilly*, 264 S.W.3d 587 (Ky. 2008). Standing to bring an action requires a personal interest, often referred to as a "substantial" interest in the subject matter of the litigation as distinguished from a "mere expectancy." *Housing Authority of Louisville v. Service Employees International Union Local 557*, 885 S.W.2d 692, 695 (Ky. 1994). The issue of standing is concerned only with the question of who is entitled to mount a legal

challenge rather than with the merits of the subject matter of the controversy. *Flast v. Cohen*, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968). It is a concept utilized to determine whether a party has shown a personal stake in the outcome sufficient to insure that a justiciable controversy is adequately presented to the court. BLACK'S LAW DICTIONARY 1413 (7th ed. 1999). Courts apply the concept of standing as a matter of self-restraint to avoid rendering advisory opinions on matters instigated by parties who are merely "intermeddlers." 59 Am. Jur. 2d *Parties* § 36 (2002). Because the jurisdiction of the court is a prerequisite to commencement of any action, standing must exist at the time the action is filed. *Id*. at § 37. With this in mind, we now turn to each of Griffin's four claims.

1. Breach of fiduciary duty

"[T]he basic elements of a breach-of-fiduciary-duty cause of action [are]: (1) the existence of a fiduciary duty; (2) the breach of that duty; (3) injury; and (4) causation." *Baptist Physicians Lexington, Inc. v. New Lexington Clinic, P.S.C.*, 436 S.W.3d 189, 193 (Ky. 2013). Griffin based his "breach of fiduciary duty" cause of action against Sarah upon Sarah's roles as Secretary of ICS and President of CJM. Regarding her former role, Griffin's argument is in relevant part as follows:

> As Secretary of ICS, Sarah Jones owed fiduciary duties to ICS and its shareholders—including Griffin. It is black letter law that corporate officers owe to the corporation and to its shareholders fundamental duties of care and loyalty. . . .

> Ms. Jones may try to argue, as she did in the circuit court, that she was not actively involved in the management of ICS (or [CJM])—but such factual disputes may not be considered at the motion to dismiss stage. Focusing solely on the Complaint and taking the alleged facts as true—as this Court must—Griffin has sufficiently alleged the existence of a fiduciary duty. Moreover, any purported failure to uphold the legal duties of a corporate officer does not negate the existence of those duties. To the extent Ms. Jones tries to argue that her husband was the sole actor behind everything that occurred here, she cannot escape her responsibilities as President of Management and as an officer of ICS (which is also a member of SEB and CBR)—especially given her alleged knowledge (and intentional concealment from Griffin) of the transactions at issue and her personal benefit from those transactions, at Griffin's expense.

(Internal quotations and citations omitted.)

Regarding Sarah's role as the President of CJM, Griffin's argument is:

> As President of [CJM], Sarah Jones also owed fiduciary duties to the managed companies and their members/shareholders—including Griffin. Officers in limited liability companies owe common law fiduciary duties similar to those imposed upon officers in corporations. . . . In this case, Ms. Jones' fiduciary capacity extended beyond [CJM] because of her role, through [CJM], as an agent for ICS, BRI, SEB and CBR.
>
> . . .
>
> A special agency relationship existed between Management and the Jones Companies. Management was formed solely for the purpose of managing the day-to-day operations of those companies. Management's only revenue came in the form of management fees collected from those companies.
>
> Management's—and likewise Ms. Jones'—right to control is evident from the nature of the alleged breach. The Complaint alleges that Ms. Jones commingled funds and assets between SEB, CBR, ICS and BRI, and

> transferred those funds to [CJM], assets and entities owned and/or managed by C. Jones, S. Jones and Management, and family members of C. Jones and S. Jones, without consideration and with the intent to defraud Griffin. In other words, Sarah Jones, through her role with [CJM], had actual control over the entities and the assets at issue. In exercising such control, Ms. Jones necessarily undertook fiduciary duties of good faith and loyalty to the managed entities and their members/shareholders.

(Internal quotations and citations omitted.)

At the onset, it appears Griffin is arguing the circuit court was required to believe Sarah owed him direct fiduciary duties in the contexts he describes above because his complaint alleged that she did, and because factual allegations in a complaint must be taken as true whenever a court considers the propriety of granting a CR 12.02 motion to dismiss. However, a statement to the effect that some form of legal duty exists under a given set of circumstances is not a factual allegation; it is a legal conclusion. *Bartley v. Commonwealth*, 400 S.W.3d 714, 726 (Ky. 2013) ("[W]hether a legal duty exists is purely a question of law[.]"). Accordingly, any statements in Griffin's complaint regarding legal duties Sarah may have owed him under the facts of this case are entitled to no deference whatsoever. *See Rosser v. City of Russellville*, 306 Ky. 462, 208 S.W.2d 322, 324 (1948) ("It is the duty of courts to declare conclusions, and of the parties to state the facts from which legal conclusions may be drawn.").

Furthermore, Kentucky law does not support that Sarah owed Griffin fiduciary duties under the facts alleged in his complaint. As described by Griffin,

the fiduciary duties Sarah allegedly breached required her to inform him personally if she had reason to know that assets would be (or were being) misappropriated from SEB and CBR. Griffin's claims in this respect were based upon the notion that Sarah owed him such direct fiduciary duties because she was an officer of both a corporation and a limited liability company, and he was a shareholder of the corporation and member of the limited liability company. But, it is generally understood that the common-law fiduciary duty owed by members of the board of directors or officers of a corporation runs directly to the corporation and the shareholders/members *as a whole*. 18B Am. Jur. 2d *Corporations* § 1462 (2011). Hence, a board member or officer owes no common-law fiduciary duty directly to an individual shareholder/member. *Id*. Likewise, the statutory duties respectively imposed upon a board member, corporate officer, or even a managing member of a limited liability company under Kentucky Revised Statutes (KRS) 271B.8-300, KRS 271B.8-420, and KRS 275.170 run directly to the corporation or limited liability company, not the members or shareholders individually.[1] Griffin also cites no authority, and we have found none, supporting that an officer of one corporation (*i.e.*, Sarah, in her role as President of CJM) generally owes any kind of direct fiduciary duty to an individual shareholder or member of a different entity.

---

[1] In particular, *see* KRS 271B.8-300(6) and KRS 271B.8-420(6) (requiring a person bringing an action for monetary damages under either section to prove the director's or officer's "breach or failure to perform was the legal cause of *damages suffered by the corporation*." (Emphasis added)). Similarly, the statute governing the duty of loyalty to members of a limited liability company instructs that the duty is to "account to . . . the company." *See* KRS 275.170(2). *See also Ballard v. 1400 Willow Council of Co-Owners, Inc.*, 430 S.W.3d 229, 241 (Ky. 2013) (holding, in the related context of non-profit corporations, "the officers and directors that have a fiduciary duty, and that duty is to the nonprofit corporation." (Citing KRS 273.215)).

Stated differently, ICS, SEB and CBR were the parties that were owed fiduciary duties and were directly injured by Sarah under the facts alleged in Griffin's complaint. As such these entities, not Griffin, were the real parties in interest regarding the subject matter of Griffin's breach of fiduciary duty claims.

2. Fraud by omission

As stated by the Kentucky Supreme Court in *Giddings & Lewis, Inc. v. Industrial Risk Insurers*, 348 S.W.3d 729, 747-48 (Ky. 2011):

> [A] fraud by omission claim is grounded in a duty to disclose. *Republic Bank* [*& Trust Co. v. Bear, Stearns & Co*.], 707 F.Supp.2d [702] at 710 [(W.D. Ky. 2010)] ("The gravamen of the tort is breach of a duty to disclose. . . .") To prevail, a plaintiff must prove: (1) the defendant had a duty to disclose the material fact at issue; (2) the defendant failed to disclose the fact; (3) the defendant's failure to disclose the material fact induced the plaintiff to act; and (4) the plaintiff suffered actual damages as a consequence. *Rivermont Inn,*[*Inc. v. Bass Hotels Resorts, Inc*.,] 113 S.W.3d [636] at 641 [(Ky. App. 2003)]. The existence of a duty to disclose is a matter of law for the court. *See Smith v. General Motors Corp*., 979 S.W.2d 127, 129 (Ky. App. 1998). *See also* Restatement (Second) of Torts § 551 cmt. m (1977) ("whether there is a duty to the other to disclose the fact in question is always a matter for the determination of the court.")
>
> . . . .
>
> Kentucky recognizes a duty to disclose in four circumstances. *Smith*, 979 S.W.2d at 129–30. The first two [are] the duty arising from a confidential or fiduciary relationship or a duty provided by statute[.] . . . The two

> other circumstances where a duty may arise are "when a defendant has partially disclosed material facts to the plaintiff but created the impression of full disclosure", *Rivermont Inn*, 113 S.W.3d at 641, or "where one party to a contract has superior knowledge and is relied upon to disclose same," *Smith*, 979 S.W.2d at 129.

Here, Griffin's fraud by omission claims are a repackaging of his previously discussed breach of fiduciary duty claims; indeed, Griffin uses the terms "fraud" and "breach of fiduciary duty" interchangeably while summarizing his fraud by omission claims in his brief:

> "[W]here the shareholder suffers an injury separate and distinct from that suffered by other shareholders, or the corporation as an entity, the shareholder may maintain an individual action in his own right." *2815 Grand Realty Corp. v. Goose Creek Energy, Inc.*, 656 F.Supp.2d 707, 715 (E.D. Ky. 2009) (citations and internal punctuation omitted). A shareholder's ability to maintain a direct action against a corporate officer for breach of fiduciary duty turns solely on two questions: (1) Who suffered the alleged harm—the corporation or the plaintiff stockholder? And (2) Who would receive the benefit of any recovery? *Id*. (following *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)).[[2]]

---

[2] Griffin's argument accurately quotes a rule that was the primary focus of the Delaware Supreme Court's opinion in *Tooley v. Donaldson, Lufkin, & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004). To reiterate, the Delaware Supreme Court held the analysis used to distinguish between a derivative and direct action "must be based solely on the following questions: Who suffered the alleged harm—the corporation or the suing stockholder individually—and who would receive the benefit of the recovery or other remedy?" *Id*. at 1035. "An action in which the holder can prevail without showing an injury or breach of duty to the corporation should be treated as a direct action . . . ." *Id*. at 1036.

As detailed below, Delaware law on this point is consistent with Kentucky's requirement for an injury independent of the corporation's injury. We further observe that in *In re Syncor International Corporation Shareholders Litigation*, 857 A.2d 994 (Del. Ch. 2004), it was reasoned that "under *Tooley*, the duty of the court is to look at the nature of the wrong alleged, not merely at the form of the words used in the complaint. As this court recently said, '[e]ven after *Tooley*, a claim is not "direct" simply because it is pleaded that way. . . . Instead the court must look to all the facts of the complaint and determine for itself whether a direct claim exists.' " *Id*. at p. 997, citing *Dieterich v. Harrer*, 857 A.2d 1017, 1027 (Del. Ch. 2004). This latter

> The damages Griffin seeks to recover are uniquely his. Griffin's claims are not based on the injury to his shareholder/membership interests in the Jones Companies (which are now all but worthless). Rather, they arise out of the nearly $30 million Griffin paid (and lost) because of the Joneses' fraudulent scheme. Had Griffin known that the Joneses were funneling his investments into the Joneses' own pockets, Griffin would not have continued to fund the enterprise.
>
> . . .
>
> As President of [CJM], Ms. Jones owed Griffin the duties of a fiduciary with respect to [CJM's] operation of the Jones Companies. Indeed, the Complaint explicitly alleges that "[a]s an officer of ICS and [CJM], S. Jones had a duty to provide material facts to Griffin." Coupled with the allegations of Ms. Jones' superior knowledge of the facts and transactions at issue, the Complaint sufficiently establishes—at least for purposes of overcoming a motion to dismiss—that Ms. Jones owed Griffin a duty to disclose and that she breached that duty.

With that said, there are at least two flaws in Griffin's reasoning. First, he appears to assume that he has a direct interest to assert through a fraud by omission claim because the money he either invested in or loaned to ICS, SEB, and CBR remained his money. But it did not remain his money. Rather, it became an asset of those entities. *See Owens v. C. I. R.*, 568 F.2d 1233, 1238 (6th Cir. 1977) ("[S]tock in a corporation represents an ownership interest in a going business organization; the stockholders do not own the corporation's property.").

Second, Griffin has premised the first element of his fraud by omission claims, once again, upon the notion that Sarah owed him a direct

---

point is also consistent with Kentucky law and is the guiding principle of our resolution of this matter.

fiduciary duty of disclosure by virtue of her status as an officer and by virtue of his status as a shareholder, member, or creditor of those entities.[3] As previously discussed, however, she did not. Indeed, a corporate officer's self-dealing, theft or embezzlement of corporate funds, or breach of fiduciary duty otherwise resulting in the depletion of corporate assets or the corporation's insolvency (the essence of Griffin's claims) are considered classic bases for derivative actions—that is, actions that derive from a duty owed to the corporate entity, rather than a duty owed to a shareholder or creditor.[4] *See, e.g., Shearin v. E.F. Hutton Group, Inc.*, 652 A.2d 578, 591 (Del. Ch. 1994) ("A claim for corporate waste is classically derivative."); *Big Lots Stores, Inc. v. Bain Capital Fund VII, LLC*, 922 A.2d 1169, 1180 (Del. Ch. 2006) (claims alleging that a defendant caused a corporation to become insolvent through what amounted to breaches of fiduciary duty "are

[3] Griffin also indicated that Sarah had "superior knowledge of the facts and transactions at issue." However, he has not alleged that he and Sarah were also parties to a contract; thus, his argument only implicates the third circumstance discussed in *Giddings,*348 S.W.3d at 747-48, in which a duty of disclosure would arise (*i.e.*, a fiduciary duty of disclosure), and not the fourth (*i.e.*, "where one party to a contract has superior knowledge and is relied upon to disclose same[.]").

[4] Standing for shareholders of private business corporations in derivative actions evolved from equitable principles. 19 Am. Jur. 2d *Corporations* § 1948 (2004). Where a corporation possessed a cause of action that it either refused or was unable to assert, equity permitted a stockholder to sue in his own name for the benefit of the corporation. *Id*. at § 1946. The shareholder was authorized to pursue the action for the purpose of preventing injustice when it was apparent that the corporation's rights would not be protected otherwise. *Id*. The General Assembly expressly provided in KRS Chapter 271B for derivative proceedings by shareholders against their for-profit corporations. KRS 271B.7-400(1) underscores that the right asserted in a shareholder derivative action belongs to the corporation, not an individual shareholder. It provides:

> A person shall not commence a proceeding in the right of a domestic or foreign corporation unless he was a shareholder of the corporation when the transaction complained of occurred or unless he became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding shall not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.

classically derivative," and "do not become direct simply because they are raised by a creditor, who alleges that the breaches of fiduciary duty caused it specific harm by preventing it from recovering a debt outside of bankruptcy."); *see also In re Ionosphere Clubs, Inc.*, 17 F.3d 600, 605 (2nd Cir. 1994), explaining:

> In some cases, where a wrong has been committed by a third party against a corporation, shareholder intervention is necessary to cause the corporation to sue for rectification of the wrong. The classic case occurs where officers or directors of the corporation appropriate for themselves (or their friends) an opportunity of the corporation, or embezzle its funds. Because the managers of the corporation responsible for causing it to bring suit are the very ones who wrongfully took from the corporation, shareholder initiative is likely to be necessary to cause suit to be brought. Such an action brought by the shareholder is derivative; it is brought in the name of the corporation for the benefit of the corporation—not for the shareholder's direct benefit. Return of the stolen funds to the corporation would rectify the injury; payment of damages directly to the plaintiff-stockholders for the diminution in the value of their stock would be inappropriate.

3. Misappropriation

Griffin's argument with respect to his misappropriation claim is as follows:

> The Complaint alleges that Ms. Jones "misappropriated company assets" and funds injected by Griffin "for her own benefit." "The fiduciary relationship of the corporate directors and officers to the corporation and its stockholders as a whole imposes upon them the obligation to serve the purpose of their trust with fidelity, and forbids any act by them that wrongfully diverts the corporate assets from corporate purposes." 3A Fletcher Cyclopedia of the Law of Corporations, § 1102.

> As President of [CJM], Ms. Jones owed a fiduciary duty of loyalty not only to [CJM], but also to the Jones Companies and their shareholders/members, including Griffin. As described in the Complaint, Ms. Jones breached that duty when [CJM] diverted assets of SEB and CBR—and Griffin's funds—for other self-interested purposes, including the construction of her house and cash transfers to members of her immediate family. Accordingly, Griffin has stated a claim for misappropriation.

This claim suffers from the same defects as Griffin's claims of breach of fiduciary duty and fraud by omission. It incorrectly characterizes the funds allegedly misappropriated as "Griffin's funds," as opposed to assets belonging to the entities themselves. Moreover, no legal authority is cited supporting that a fiduciary duty was owed to Griffin directly. To the contrary, the treatise cited by Griffin as his sole authority regarding this particular claim undermines that proposition by further explaining that "Funds of a corporation can be lawfully used for corporate purposes only, and if *misappropriated* by the directors, they and whoever with notice participates with them are jointly and severally liable *to the corporation* for the loss and damage." 3A Fletcher Cyclopedia of the Law of Corporations § 1102 (West 2011) (emphasis added).

4. Unjust enrichment

Griffin's argument regarding his unjust enrichment claim is, in relevant part, as follows:

> "The equitable doctrine of unjust enrichment is applicable as a basis for restitution to prevent one person from keeping money or benefits belonging to another." *Rose v. Ackerson*, 374 S.W.3d 339, 343 (Ky. App. 2012)

> (citation and internal quotation omitted). To prevail on an unjust enrichment claim under Kentucky law, a plaintiff must establish three elements: (1) that a benefit was conferred on the defendant at the plaintiff's expense; (2) a resulting appreciation of that benefit by the defendant; and (3) an inequitable retention of that benefit without payment for its value. *Jones v. Sparks*, 297 S.W.3d 73, 78 (Ky. App. 2009).
>
> Griffin's Complaint sufficiently asserts all three elements. Ms. Jones obtained benefits at Griffin's expense when [CJM] siphoned funds from the Jones Companies—funds largely provided by Griffin—for the Joneses' own self-interested use, including construction of their personal residence and cash transfers to family members. Under the circumstances, it would be unjust for Ms. Jones to retain those benefits without payment.

What Griffin acknowledges in his argument, however, is that his unjust enrichment claim is based upon the fact that "funds" were "siphoned" from ICS, SEB, and CBR. Thus, Griffin (an investor and shareholder) is asserting that he has a direct cause of action against Sarah (a corporate officer) because Sarah *indirectly benefitted at his expense* by misappropriating corporate assets. Laid bare, this is simply an impermissible attempt to convert a derivative claim into a direct claim through nothing more than an exercise in semantics; it is another way of asserting that Sarah, in her role of corporate officer, *indirectly injured him* (an investor and shareholder) by misappropriating corporate assets. *See 2815 Grand Realty Corp. v. Goose Creek Energy, Inc.*, 656 F.Supp. 2d 707, 716 (E.D. Ky. 2009) ("a diminution in the value of corporate stock resulting from some depletion of or injury to corporate assets is a direct injury only to the corporation; it is merely an indirect or incidental injury to an individual shareholder." (Citations omitted.)

CONCLUSION

For the reasons discussed, Griffin lacked standing to assert his claims of breach of fiduciary duty, fraud by omission, misappropriation, and unjust enrichment against Sarah; at best, those claims were entirely derivative in nature. We therefore AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

Griffin Terry Sumner
J. Kendrick Wells, IV
Lousiville, Kentucky

Robert V. Sartin
Joseph Al Kelly
Nashville, Tenessee

ORAL ARGUMENT:

Griffin Terry Sumner
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kent Wicker
Nicole S. Elver
Louisville, Kentucky

ORAL ARGUMENT:

Nicole S. Elver
Louisville, Kentucky