

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000353-MR

DANNY BELL A/K/A  
SOMERPLACE APARTMENTS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DAVID A. TAPP, JUDGE  
ACTION NO. 13-CI-00809

CYNTHIA HELTON, EXECUTRIX  
OF THE ESTATE OF SHANNON NORRIS;  
BRITTANY HELTON; AND PENNY L.  
HINES

APPELLEES

OPINION  
AFFIRMING IN PART AND  
REVERSING IN PART

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BEFORE: ACREE, JONES AND MAZE, JUDGES.

ACREE, JUDGE: The issue to be decided in this appeal is who bears responsibility for guardian-ad-litem (GAL) fees associated with a third-party complaint. The Pulaski Circuit Court ordered appellant and third-party plaintiff,

Danny Bell a/k/a Somerplace Apartments, to pay the GAL fees. After review, we affirm in part and reverse in part.

### **I. Factual and Procedural Background**

The tragic events leading up to this dispute occurred in May 2012. Brittney Helton (Mother) was at Somerplace Apartments and was attempting to park the vehicle she was driving when she struck Shannon Norris (Child) who was standing on a sidewalk between the parking space and the apartment building. Child died from his injuries.

Cynthia Helton (Grandmother) was appointed executrix of Child's estate. Grandmother filed a complaint against the owner of the apartments, Danny Bell, alleging that Bell's negligent failure to maintain his property was the direct and proximate cause of Child's death.

Bell subsequently filed a motion for leave to file a third-party complaint against Mother. The motion was granted. In his complaint, Bell alleged that Mother's negligent operation of the vehicle and negligent supervision of her child were the direct and proximate causes of Child's death.

At the time the third-party complaint was filed, Mother was incarcerated at the Pulaski County Detention Center for a matter unrelated to the underlying negligence action. As a result, the circuit court entered an order

pursuant to Kentucky Rule of Civil Procedure (CR) 17.04<sup>1</sup> appointing an attorney as guardian ad litem (GAL) for Mother to represent her as a third-party defendant.

Ultimately, the parties reached a settlement agreement, and the circuit court entered an order dismissing the lawsuit as settled.

GAL Penny Hines filed a motion for her fees. The motion requested an award of \$1,498.00. In support of the fee amount, the GAL affirmed that she performed the following: review of file materials; general file maintenance; general correspondence and conference with the client, parties and witnesses; preparation and review of pleadings, memoranda, reports, and orders; court appearances; review of client's video deposition; and legal research. The GAL further stated that she spent a total of 10.7 hours on the matter and that her hourly rate was \$140.00. The Pulaski Circuit Court entered an order sustaining the GAL's motion, and ordered the fees to be paid by the plaintiff within 20 days.

Approximately one month later, the GAL served a motion to compel payment of the fees and a motion for additional fees of \$500.00 for having to bring the matter before the court for a second time. The motion stated that the GAL had been advised by Grandmother's attorney that he and his client were not going to pay the fees.

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<sup>1</sup> The rule states: (1) Actions involving adult prisoners confined either within or without the State may be brought or defended by the prisoner. If for any reason the prisoner fails or is unable to defend an action, the court shall appoint a practicing attorney as guardian ad litem, and no judgment shall be rendered against the prisoner until the guardian ad litem shall have made defense or filed a report stating that after careful examination of the case he or she is unable to make defense. CR 17.04(1).

Grandmother followed with a motion for modification asking the court to clarify its order awarding the GAL fees. Grandmother argued that she should not be responsible for the fees because she did not name Mother in the action or request the GAL to be appointed. Grandmother additionally filed a response to the GAL's motion arguing that she was not a plaintiff in any action against Mother, but that Bell was the plaintiff against Mother. Again, Grandmother maintained that Bell should have to pay the GAL fees because he brought Mother into the action through his third-party complaint. Grandmother also argued the GAL fees were excessive.

Bell filed a response to Grandmother's motion to modify the order awarding the GAL fees and joined the GAL's motion to compel payment of fees against plaintiff Grandmother. Bell noted that Kentucky Revised Statute (KRS) 387.305 governs who is responsible for paying the GAL fee. By its express language, argues Bell, the statute requires the GAL fees "to be paid by the plaintiff." KRS 387.305(4).

The Pulaski Circuit Court held a hearing on the motions on February 6, 2015. Shortly thereafter, the circuit court entered an order which stated:

Upon Motion by Hon. Penny L. Hines, GAL for [Mother], and argument of counsel having been heard, it is hereby ordered that the Third-Party Plaintiff, Somerplace Apartments, pay GAL fees in the amount of \$1,748.00<sup>[2]</sup> to Penny L. Hines on or before February 27, 2015.

Bell now appeals.

<sup>2</sup> This amount reflects the circuit court's award of an additional \$250 fee to the GAL.

## II. Standard of Review

The central issue in this appeal relates to the interpretation of KRS 387.305(4). “[S]tatutory construction is a matter of law subject to a *de novo* standard of review. *Cumberland Valley Contractors, Inc. v. Bell City Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007) (citing *Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth of Ky., Transportation Cabinet*, 983 S.W.2d 488, 490 (Ky. 1998)).

## III. Analysis

Bell argues this Court is obligated to enforce KRS 387.305(4) as it is written, and to require Grandmother, as the plaintiff who initiated the litigation, to pay the GAL fees. Any other conclusion, the argument goes, would lead to a variance with the stated language violating rules of statutory construction and result in conflict with the intent of the General Assembly. We are not persuaded.

“The seminal duty of a court in construing a statute is to effectuate the intent of the legislature.” *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002) (citing *Commonwealth v. Harrelson*, 14 S.W.3d 541 (Ky. 2000)). “The plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source.” *Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815, 819 (Ky. 2005) (citation omitted). Thus, we are “to ascertain the intention from the words employed in enacting the statute, rather than surmising what may have been intended but was not expressed.” *Kentucky Ass’n of Chiropractors, Inc. v. Jefferson County Medical Soc.*, 549 S.W.2d 817, 821 (Ky. 1977) (citing *Gateway*

*Construction Company v. Wallbaum*, 356 S.W.2d 247, 249 (Ky. 1962)). Naturally, statutes “must be read as a whole and in context with other parts of the law.” *Hall v. Hosp. Resources, Inc.*, 276 S.W.3d 775, 784 (Ky. 2008) (quoting *Lewis v. Jackson Energy Co–Op Corp.*, 189 S.W.3d 87, 92 (Ky. 2005)).

A civil action commences with the filing of a legal complaint. *See* CR 3.01. The party bringing the complaint, *i.e.*, the plaintiff, states the basis for her claim and demand for relief. *See* Black’s Law Dictionary (10th ed. 2014) (PLAINTIFF, The party who brings a civil suit in a court of law.). When a defendant is granted leave to file a third-party complaint it is “to assert a claim against a person not a party to the action who is or may be liable to him for all or part of the plaintiff’s claim against him.” CR 14.01. This action does not initiate a separate lawsuit, but serves the purpose behind Rule 14.01 “to avoid circuitry of action and to settle related matters in one litigation as far as practicable.” *Jackson & Church Division, York-Shiple, Inc. v. Miller*, 414 S.W.2d 893, 894 (Ky. 1967) (quoting Moore’s Federal Practice, Second Edition, §14.04, pp. 503-505). The defendant is then also referred to as a third-party plaintiff.

Grandmother was the plaintiff who originated the negligence action against Bell. However, the services of the GAL were not needed or provided until Bell filed his third-party complaint against Mother. Bell was not only the defendant in the negligence action, he was a third-party plaintiff as well. As against Mother, Bell is the plaintiff. Bell’s status as a third-party plaintiff does not place him in a different position than the original plaintiff based upon the language

of KRS 387.305(4). For practical purposes, both positions are essentially the same. It is a distinction without a difference.

KRS 387.305(4) does not differentiate among different types of plaintiffs, but simply says “plaintiff.” Bell clings to this fact as his reasoning to avoid liability for the GAL fees. There is a difference, he says, between “plaintiff” and “defendant/third-party plaintiff.” We view the use of the term “plaintiff” as inclusive of Bell’s status as a third-party plaintiff. “We have often said that statutes will not be given [a party’s asserted interpretive] reading where to do so would lead to an absurd or unreasonable conclusion.” *Wesley v. Board of Ed. of Nicholas County*, 403 S.W.2d 28, 30 (Ky. 1966); *see also Commonwealth of Ky., Dept. of Highways v. Wilkins*, 320 S.W.2d 125, 126 (Ky. 1959). The legislature’s failure to delineate in the statute every sub-category of plaintiff does not compel a reading that would exclude those sub-categories from our reading of the statute, and so does not relieve Bell of his obligation, under that statute, as a third-party *plaintiff*.

We have no difficulty concluding the intent behind use of the term “plaintiff.” It places the cost of the GAL on the party bringing the legal action against another who, for whatever reason, is unable to defend her own interest, in this case, because of incarceration. This interpretation is plainly supported by the ordinary meaning of the language used in KRS 387.305(4). Bell’s assertion leads to an unreasonable result under these circumstances. Grandmother did not file any

claims against Mother in this action, and Mother's involvement in the lawsuit was Bell's doing.

Accordingly, as the third-party plaintiff, Bell is required to pay the GAL fees of the third-party defendant.

Our conclusion is further supported by long-standing case law. In *Cooke v. Fidelity Trust & Safety-Vault Co.*, 20 Ky.L.Rptr. 667, 104 Ky. 473, 47 S.W. 325 (1898), the executor of the decedent's estate initiated a lawsuit to settle the estate against the decedent's widow, Mary Cooke. Cooke filed an answer and cross-petition against the decedent's two sons, making them defendants in the action. Cooke also requested that a GAL be appointed to represent the sons' interests on the cross petition. The cross petition was ultimately dismissed, but the trial court ordered that the estate, the plaintiff to the principal action, pay the GAL fee. On appeal, the Court determined that it was error to require the plaintiff to pay the GAL fee because the GAL's appointment and subsequent services resulted from the filing of the cross petition by Cooke. Cooke, defendant and cross-petitioner, was held responsible for paying the GAL fee.

Bell argues in the alternative that if he is obligated to pay the GAL fee that it should not include the additional \$250.00 awarded by the circuit court to the GAL. We agree.

Only if the circuit court has abused its discretion will its fee determination be disturbed on appeal. *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 854 (Ky. 2013). That is, if the fee determination was "arbitrary,



unreasonable, unfair, or unsupported by sound legal principles.” *Id.* (citation omitted).

A GAL is entitled to a “reasonable fee for his services.” KRS 387.305(4). The \$250.00 additional fee imposed by the court resulted from a misunderstanding of the circuit court’s original order awarding fees to the GAL to be paid “by the plaintiff.” The GAL demanded payment from Grandmother based upon that order. When the GAL moved the court for the second time attempting to collect payment of her fee, she requested an additional \$500 for having to bring the matter before the court again. Grandmother alerted the court that the order needed clarification as to who it was ordering to pay the GAL fee. When the court clarified its order stating that Bell was to pay the GAL, it imposed an additional \$250.00 on the fee amount. This was error. The additional amount effectively penalizes Bell for the trial court’s lack of clarity and the parties’ misunderstanding. It is, therefore, unfair and unreasonable under these circumstances and an abuse of discretion. Therefore, we reverse the circuit court’s order to the effect that Bell is not responsible for the additional \$250.00.

#### **IV. Conclusion**

To the extent the Pulaski Circuit Court’s order imposes an additional \$250.00 on the \$1,498.00 GAL fee to be paid by Danny Bell a/k/a Somerplace Apartments, we reverse. In all other respects, we affirm.

MAZE, JUDGE, CONCURS.

JONES, JUDGE, CONCURS IN PART AND DISSENTS IN PART

WITHOUT SEPARATE OPINION.

BRIEFS FOR APPELLANTS:

Bridget L. Dunaway  
John Michael Carter  
London, Kentucky

BRIEF FOR APPELLEES:

James R. Pennington  
Daniel G. Yeast  
Somerset, Kentucky