RECENT DECISIONS AND HOT ISSUES: CIVIL CASES

Cases: October 1, 2024-October 3, 2025

The following are summaries of case highlights from opinions filed in the last 12 months by the Kansas Supreme Court or the Kansas Court of Appeals. They have been prepared by staff attorneys for the two courts and are not to be used as an authoritative reference regarding the cases described. Only the portion of each case related to the topic noted is discussed. You are encouraged to read the entire case before relying upon it.

The effect of a petition for review: Pending determination of the Supreme Court on a petition for review and during the time in which a petition for review may be filed, an opinion of the Court of Appeals is not binding on the parties or on the district courts. If a petition for review is granted, the decision or opinion of the Court of Appeals has no force or effect, and the mandate will not issue until disposition of the appeal on review. If review is denied, the decision of the Court of Appeals is final as of the date of the denial. A denial of a petition for review expresses no opinion of the Supreme Court on the merits of the case. See Kan. Sup. Ct. R. 8.03

ADMINISTRATIVE LAW

JURISDICTION—TIMELY PETITION FOR REVIEW. Grandparents filed a timely notice of appeal from a State Appeals Committee decision which affirmed findings that the Grandparents neglected the minor children. But the notice failed to include the required filing fee. Fifteen days after the filing deadline passed, Grandparents were able to file a compliant notice of appeal. The district court, finding that the fee was a jurisdictional requirement, dismissed the appeal. The Court of Appeals reversed, holding that the payment of a docket fee is a procedural, attendant requirement that accompanies the filing of a petition. Therefore, failure to pay the filing fee is not a jurisdictional bar.

E.F. and V.F. v. Kansas Department for Children and Families, 65 Kan. App. 2d 588, 567 P.3d 825 (Apr. 25, 2025).

APPELLATE PROCEDURE

PRESERVATION. When an appellant raises an issue for the first time on appeal, the appellant must brief an exception to the preservation rule in the opening brief. The exception may not be invoked for the first time in a reply brief.

Schutt v. Foster, 320 Kan. 852, 572 P.3d 770 (Jul. 25, 2025).

CHILD IN NEED OF CARE

JURISDICTION. Father appealed the district court's termination of his right to parent S.C., contending that the district court lacked subject matter jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act. The Court of Appeals disagreed, holding that the district court had initial child custody jurisdiction because S.C. and her parents had a significant connection with Kansas beyond mere physical presence and substantial evidence about the child's care, protection, training, and personal relationships was available in Kansas.

In the Interest of S.C., a Minor Child, 65 Kan. App. 2d 128, 561 P.3d 538 (Dec. 6, 2024).

CIVIL PROCEDURE

ANTI-SLAPP. Dr. Daniel Neuman sued his former employer, Anesthesia Associates of Kansas City, P.A. (AAKC) for defamation. AAKC moved to strike the defamation claim under the Kansas Public Speech Protection Act (KPSPA), as a legitimate exercise of AAKC's right of free speech. The district court denied the motion, and AAKC appealed. The Court of Appeals panel affirmed, holding AAKC's statements were not protected

speech under the KPSPA as they were not made in connection with an issue of public interest and were commercial speech.

> *Neuman v. Anesthesia Associates of Kansas City, P.A.*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2177353, 127,030 (Aug. 1, 2025).

STATUTE OF LIMITATIONS; RETROACTIVE APPLICATION. A.S. filed a suit in 2021 alleging damages from sexual abuse she suffered in childhood. While litigation was ongoing, the Kansas Legislature amended the statute of limitations on claims related to childhood sexual abuse. The district court determined that the amended language barred A.S. from pursuing her claims. On appeal, the Court of Appeals reversed, holding that the new language did not apply retroactively and A.S. had a vested right in her cause of action.

> *A.S. v. Vineyard Church of Overland Park d/b/a Vineyard Community Church, Vineyard USA, Mark Warner, and Robert Bloom*, 65 Kan. App. 2d 756, 573 P.3d 728, 2025 WL 1779073, 127,118 (June 27, 2025), *petition for rev. was filed* (Jul. 28, 2025).

TEMPORARY INJUNCTION REQUIREMENTS; STATUTORY INTERPRETATION & CONSTRUCTION. Based on a new law defining biological sex, the Attorney General filed a mandamus action seeking to compel the Kansas Department of Revenue to list an individual's biological sex on Kansas driver's licenses instead of their preferred gender. The district court granted a temporary injunction, preventing the KDOR from allowing gender marker changes as it had since 2007. On appeal, the Court of Appeals panel held the district court abused its discretion in applying the temporary injunction factors in the AG's favor, concluding the AG failed to show a reasonable probability of irreparable future injury or a substantial likelihood of prevailing on the merits. The panel reversed the temporary injunction and remanded for further proceedings.

> *State, ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 571 P.3d 6, 2025 WL 1668749, 127,390 and 127,522 (June 13, 2025), *petition for rev. was filed* (Jul. 14, 2025).

REVIVOR OF DORMANT JUDGMENT. Citizens Bank moved to revive a dormant judgment against Gregory and Darlene Gaskins, and the Gaskins moved for relief from judgment. The district court held K.S.A. 60-2404 required an execution to be filed with the motion for revivor and granted relief. The panel reversed the district court, holding that "forthwith" meant "without unnecessary delay" and did not require simultaneous filings.

The panel also found that Citizens Bank took the necessary steps to request an aid in execution hearing and the delay "did not result from a lack of due diligence or reasonable exertion on its part."

> *Citizens Bank, N.A. v. Gaskins*, 65 Kan. App. 2d 447, 567 P.3d 891 (Mar. 21, 2025), *petition for rev. filed* (Apr. 21, 2025), *petition for rev. denied* (Jun. 27, 2025).

JURY DETERMINATIONS. The Court of Appeals reversed the district court's ruling that Alenco, Inc., violated the Kansas Consumer Protection Act (KCPA), holding the judge improperly substituted his factual findings for the jury's verdict. Although the district court found Alenco engaged in unconscionable practices in violation of the KCPA, the panel emphasized that the jury had already determined Alenco committed no deceptive acts. The panel held that while "K.S.A. 50-627 reserves the question of unconscionability for the court," it "does not give a judge free reign to . . . reweigh the evidence on claims that have already been decided" by the jury.

> *Alenco, Inc. v. Warrington*, 65 Kan. App. 2d 79, 560 P.3d 586, (Oct. 25, 2024), *petition for rev. filed* (Nov. 22, 2024), *petition for rev. denied* (Feb. 28, 2025).

CONTRACTS

FORMATION. Monarch Build and DLH Holdings entered into an agreement for the design and/or construction of a commercial building. DLH acknowledged that they agreed to a contract for the design phase of the project, but they disputed that the parties reached a legally enforceable agreement on the construction phase of the agreement. The district court determined a binding agreement for construction was made and awarded damages and attorney fees. The Court of Appeals affirmed, in part, the district court's judgment, finding an enforceable agreement for both phases of the project and substantial competent evidence supporting an award of damages; however, the court reversed the award of attorney fees

> *Monarch Build, LLC v. DLH Holdings, LLC, et al.*, 65 Kan. App. 2d 519, 567 P.3d 831 (April 11, 2025).

MOTIONS TO DISMISS. Capitol Federal Savings Bank moved to dismiss Jennifer Harding's and Samantha Ramirez' class action suit because they violated their contract's notice provision. Harding and Ramirez argued that the notice provision—involving "improper charges"—did not apply to their claims. The district court granted the bank's motion to dismiss. The Court of Appeals reversed, finding the term "improper charges" ambiguous,

which required the resolution of a question of fact that could not legally be decided in a motion to dismiss.

> *Harding and Ramirez v. Capital Fed. Sav. Bank*, 65 Kan. App. 2d 30, 556 P.3d 910 (Oct. 4, 2024), *petition for rev. filed* (Nov. 1, 2024), *petition for rev. granted* (Feb. 21, 2025).

ESTATES

CHOICE-OF-LAW. Lorine H. Mueller's will, devising properties in Kansas and Nebraska, was admitted to probate in Kansas. Before Lorine's death, her daughter-in-law (Cheryl Mueller) signed a confessed judgment. Lorine's children petitioned the district court to set off the judgment against Cheryl's share of the estate. Cheryl argued the debt was uncollectible under Nebraska law. The Kansas district court, applying Nebraska law, denied the setoff. The Court of Appeals reversed and remanded, holding that the district court should have applied Kansas law.

> *In re Estate of Mueller*, 65 Kan. App. 2d 643, 571 P.3d 61, 2025 WL 1600867, 127,532 (June 6, 2025), *petition for rev. filed* (Jul. 3, 2025).

ESTATES AND TRUSTS

WILLS. Larry Franklin Holderman died testate and named his parents as the sole beneficiaries of his estate. Holderman expressly disinherited his two children from inheriting under his will. Holderman's parents predeceased him. Holderman's children as well as two of the lineal descendants of Holderman's parents claimed to have an interest in the estate. The Court of Appeals affirmed the district court's judgment, finding that the anti-lapse statute applied and, even though Holderman's parents predeceased him, the lineal descendants of his parents would inherit the estate, except for Holderman's two children who were expressly disinherited in the will.

> *In the Matter of the Estate of Larry Franklin Holderman*, __ Kan. App. 2d __, ___ P.3d ___, 2025 WL 2552171, 127,546 (September 5, 2025).

SETTLOR'S INTENT. Norma Sutherland established two trusts, one of which was structured to fund the other. Peter Sutherland, a beneficiary of the recipient trust, filed a petition against the trustee of both trusts seeking information about the assets and structure of the funding trust. The district court dismissed Peter's petition against the trustee of the funding trust for lack of standing, and granted summary judgment for the trustee of the recipient trust, finding Peter was not entitled to the information he sought due to the trust's privacy provisions. The Court of Appeals affirmed the holding that Peter lacked standing. But the court reversed the finding that Peter violated the privacy provisions because the

ruling relied on an, unsupported, finding that Peter knew he was not entitled to receive the information.

Peter D. Sutherland v. Perry H. Sutherland, Trustee Norma H. Sutherland Master GST Trust and Perry H. Sutherland, Trustee Norma H. Sutherland Revocable Trust UTA5/13/1996, 65 Kan. App. 2d 562, 567 P.3d 873 (April 11, 2025).

FAMILY LAW

TERMINATION OF PARENTAL RIGHTS. Conviction of a felony and imprisonment is an independent statutory condition of unfitness so long as it renders the parent unable to care properly for his or her child. In assessing whether the conduct or condition rendering the parent unable to care properly for the child is unlikely to change in the foreseeable future, the inquiry does not end merely because the underlying condition—such as imprisonment—has a defined endpoint. The critical question is not just whether the parent will be physically available, but whether the parent will be able to care properly for the child in a time frame consistent with the child's best interests.

Interest of K.W.D., __ Kan. __, 573 P.3d 221 (Aug. 8, 2025).

TERMINATION OF PARENTAL RIGHTS. Although K.S.A 38-2248(f) allows a proffer against an absent party during an evidentiary hearing to terminate parental rights, a proffer alone is insufficient to terminate parental rights because the parent is unfit. A district court must rely on clear and convincing evidence in making a finding of unfitness and terminating parental rights. And a proffer, as a matter of law, is not evidence.

In re A.K., 320 Kan. 805, 572 P.3d 763 (Jul. 18, 2025).

DIVORCE. The district court granted Madeline Kenkel a divorce from John Kenkel and divided the parties' marital assets. John appealed, claiming the district court abused its discretion in its division of the assets—mainly Garmin shares John received as compensation—and the district court abused its discretion in offsetting other debts. The Court of Appeals held that the district court did not err in dividing marital assets but erred in offsetting the parties' debts part of the debt assigned to John was not removed from the bank before the valuation date.

In the Matter of the Marriage of Madeline Kenkel and John Kenkel, __ Kan. App. 2d __, __P.3d __ 2025 WL 2630044, 127,090 (Sep. 12, 2025).

MARITAL PROPERTY. Based on plain statutory language, all property of married persons becomes marital property upon commencement of divorce proceedings in which a

court enters a final divorce decree. A court does not apply the "analytical approach" to determine whether annuities for personal injury awards are marital or separate property.

In re Karanja-Meek and Meek, 320 Kan. 313, 567 P.3d 252 (Apr. 18, 2025).

TERMINATION OF INTERESTED PARTY STATUS The district court terminated Grandparents' interested party status without providing notice or an evidentiary hearing. A year later, Grandparents filed a petition for relief in the district court's civil division—which the district court denied, finding the claims should have been brought within the child in need of care case. On appeal, the Court of Appeals affirmed, holding that an adequate procedure existed within the Care of Children Code to challenge the decision. Grandparents could not collaterally attack the decision.

J.H. v. TFI Family Svcs., Inc., 65 Kan. App. 2d 784, 573 P.3d 746, 2025 WL 1779079, 127,662 (June 27, 2025), *petition for rev. was filed* (Jul. 25, 2025).

ADOPTION; TERMINATION OF PARENTAL RIGHTS. Stepfather sought to adopt his stepdaughter, E.R.K., alleging that biological father failed to assume his parental duties for two years immediately preceding the petition. The district court agreed and terminated the biological father's parental rights. The Court of Appeals affirmed, finding that biological father had no more than incidental contact with E.R.K for the two year period and provided no meaningful support.

In re Adoption of E.R.K., 65 Kan. App. 2d 613, 571 P.3d 76 May 9, 2025).

EVIDENCE; CHILD SUPPORT. Mother and Father moved to modify their parenting plan. The district court ordered an investigator to conduct psychological evaluations and parenting assessments of the parents under K.S.A. 23-3210. On appeal, Mother challenged the admission of her psychological evaluation at a hearing and the calculation of child support. The Court of Appeals held the district court correctly admitted the evaluations and assessments and that a *Daubert* hearing is not required to determine their admissibility. It also ruled that capital gains is income for purposes of calculating child support, even if that income is used to pay attorney fees in the child support litigation.

In the Matter of the Marriage of L.F. and M.F., 65 Kan. App. 2d 175, 562 P.3d 1014 (Jan. 3, 2025).

FIREARMS MANUFACTURER LIABILITY

QUALIFIED CIVIL-LIABILITY IMMUNITY. Under the Protection of Lawful Commerce in Arms Act, product-liability claims are barred when a firearm is used as intended or in a reasonably foreseeable manner. Specifically, manufacturers and sellers are immune from product-liability claims when a volitional act causes the discharge resulting

in death, injury, or damage, and the shooting—including the discharge and the volitional act-constitutes a crime.

Johnson v. Bass Pro Outdoor World, LLC, 320 Kan. 325, 567 P.3d 810 (Apr. 25, 2025).

INSURANCE

FIDUCIARY DUTIES. A fiduciary duty may arise as a matter of law or as a question of fact when implied in law based on the factual situation surrounding the parties' transactions and relationships. The law does not view the traditional relationship between an insured and an insurer and its agents as one with inherent fiduciary duties. But a duty may nonetheless arise if the facts and circumstances create a special relationship of trust and confidence, and the purported fiduciary consciously assumes to undertake fiduciary duties.

Stroud v. Ozark National Life Insurance Co., 320 Kan. 180, 564 P.3d 725 (Feb. 28, 2025).

JURISDICTION

STANDING; PRESETTLEMENT ATTORNEY FEES. In reviewing a district court's refusal to award attorney fees for alleged presettlement discovery violations, the Court of Appeals held that the discovery violation issue was not mooted by the settlement and that Richard Gould's acceptance of the settlement proceeds did not amount to acquiescence because the claim to attorney fees would not impact the amount paid under the settlement. Nevertheless, the Court affirmed the dismissal of the claims because the broad language of the settlement agreement barred all additional claims and disputes arising from the action.

Richard A. Gould v. Patricia D. Crawley, M.D., Michael F. Lloyd, D.O., and Newman Memorial County Hospital D/B/A Newman Regional Health, 65 Kan. App. 2d 814, 573 P.3d 701, 2025 WL 1909659, 127,343 (July 11, 2025), *petition for rev. was filed* (Aug. 13, 2025).

SUBJECT-MATTER JURISDICTION. Subject-matter jurisdiction is the constitutional power of courts to decide disputes. Once properly invoked, that power does not go away simply because a claim is flawed. A party cannot argue for the first time on appeal that the opposing party cannot prevail even if the opposing party's factual allegations are

taken as true, which is effectively a motion to dismiss, by clothing it as a lack of subject-matter jurisdiction.

Nicholson v. Mercer, 319 Kan. 712, 559 P.3d 350 (Nov. 27, 2024).

LANDLORD TENANT

LANDLORD'S DUTY TO PROVIDE HABITABLE HOUSING. After Kia Hession failed to pay her monthly rent for her apartment, her landlord—Washburn South—filed this lawsuit seeking eviction and recovery of the past-due rent. Hession counterclaimed for breach of Washburn South's duty to provide minimum habitability requirements and for retaliation for Hession's reports of her apartment's condition with the City of Topeka and a housing-assistance program. The Court of Appeals reversed, holding that the trial court's ruling was based on an erroneous circular analysis.

Washburn South Apartments LLC v. Kia Hession, 65 Kan. App. 2d 626, 570 P.3d 1268 (June 6, 2025).

PREEMPTION

CONFLICT PREEMPTION. When determining whether state law is preempted by a federal regulation, a court must conduct its own conflict analysis based on the regulatory text. Regulatory preambles are insufficient to establish a conflict. When a federal law permits, but does not require, action by a private party, there is generally room for the state to prohibit that action. A Kansas law prohibiting employers from inquiring into the sincerity of the beliefs of an employee seeking a COVID-19 waiver is not preempted by federal law that generally allows such an inquiry.

Powerback Rehabilitation, LLC v. Kan. Dept. of Labor, __ Kan. __, __ P.3d __, 2025 WL 2749421 (Sep. 26, 2025).

REAL PROPERTY

CONDITIONAL USE PERMITS. The Board of Pottawatomie County Commissioners approved a conditional use permit for Mid-States Materials to operate a quarry on agricultural land. James Pierson, whose land bordered the quarry location, challenged the Board's decision. The district court affirmed the Board's decision. On review, the Court of

Appeals held that the Board properly considered the factors required by law and that Pierson failed to show the Board's decision was unreasonable.

> *Pierson v. Board of Pottawatomie County Commissioners*, __ Kan. App. 2d __, __ P.3d __, 2025 WL 2177492, 127,167 (Aug. 1, 2025).

ZONING; PROTEST PETITIONS. David and Danielle Tegtmeier own property in rural Riley County, for which they obtained a zoning change from agriculture to agribusiness in 2014. In 2022, the Tegtmeiers applied to the County to amend their development plan. After receiving notice of the proposed amendment, several neighboring property owners opposed the amendment, and they filed a protest petition. The County Commissioners approved the amended plan. The district court affirmed the County's approval. The Court of Appeals affirmed the district court, holding that the district court properly concluded that the County appropriately calculated the number of signatures required for the protest petition and determined that the petition lacked the requisite number of signatures.

> *Prairiewood Holdings, LLC v. Board of Riley County Comm'rs*, 65 Kan. App. 2d 792, 573 P.3d 688, 2025 WL 1909645, 127,166 (July 11, 2025), *petition for rev. was filed* (Jul. 30, 2025).

SEARCHES AND SEIZURES

CIVIL FORFEITURE. In the course of a traffic stop of Boris Rodriguez, Kansas Highway Patrol Trooper Chandler Rule seized $28,350. In the subsequent civil forfeiture proceedings, Rodriguez claimed that the traffic stop was unjustified and that the detention exceeded the scope of the traffic stop. The district court disagreed and found the cash subject to forfeiture. On appeal, the Court of Appeals affirmed, holding that the traffic stop was justified and that, under the totality of the circumstances, Rodriguez' detention after the traffic stop was voluntary or supported by probable cause.

> *State of Kansas, ex rel. Kansas Highway Patrol v. $28,350 in U.S. Currency*, 65 Kan. App. 2d 203, 562 P.3d 1034 (Jan. 10, 2025), *petition for rev. filed* (Feb. 9, 2025), *petition for rev. denied* (Apr. 28, 2025).

TORTS

KANSAS TORT CLAIMS ACT. Under the recreational us exception to liability, governmental entities are given immunity and shall not be liable for damages resulting from any claim for injuries resulting from the use of any public property intended for recreational purposes. The exception applies to both outdoor and indoor public property that is used as

an open area for recreation that refreshes the body or mind in any form of play, amusement, or relaxation.

Zaragoza v. Bd. of Johnson Co. Commissioners, 320 Kan. 691, 571 P.3d 545 (Jun. 27, 2025).

TORTS (NEGLIGENCE)

REASONABLE STANDARD OF CARE—EXPERT TESTIMONY. After a teacher physically restrained and struck a child, the child's parents sued the school alleging it negligently trained and supervised the teacher. The district court granted summary judgment to the school, finding the plaintiffs failed to provide required expert testimony to establish the reasonable standard of care. The Court of Appeals reversed, holding the plaintiffs' claim did not require expert testimony to establish the school deviated from the reasonable standard of care.

S.B. v. Sedgwick County Area Educational Services Interlocal Cooperative #618, 65 Kan. App. 2d 54, 556 P.3d 902 (Oct. 11, 2024), *petition for rev. filed* (Nov. 12, 2024), *petition for rev. denied* (Feb. 28, 2025).

WORKERS COMPENSATION

SUBROGATION LIENS. Justin Rumbaugh was injured while working for DirecTV. DirecTV's insurer paid for Rumbaugh's treatment. Later, Rumbaugh recovered damages through a settlement agreement in a medical malpractice suit. Rumbaugh later filed a post-award application for workers compensation benefits. The Workers Compensation Board found DirecTV held a subrogation lien against Rumbaugh's entire third-party medical malpractice settlement and that Rumbaugh must first use the settlement for future medical bills. The Court of Appeals held the Board erred by granting a lien against his entire medical malpractice settlement award without first determining whether the award constituted duplicative recovery.

Rumbaugh v. DirecTV, 65 Kan. App. 2d 266, 564 P.3d 17 (Jan. 17, 2025).

CHOICE OF LAW. While in Kansas, Linda Henretty was hired for a job to be performed in Montana. She moved to Montana, was injured there, and received workers compensation. Eventually she moved back to Kansas and sought workers compensation in Kansas. Affirming the Workers Compensation Board, the Court of Appeals held Kansas had jurisdiction over the claim under K.S.A. 44-506 because the employment contract was made in Kansas. Henretty's claim had significant contacts with Kansas so that it did not

offend the Full Faith and Credit Clause or due process to apply Kansas rather than Montana law.

> *Henretty v. Healthcenter Northwest, LLC, et al.*, 65 Kan. App. 2d 67, 559 P.3d 1229 (Oct. 18, 2024), *petition for rev. filed* (Nov. 6, 2024), *petition for rev. denied* (Feb. 28, 2025).

WRONGFUL CONVICTION

DISSMISSED CHARGES. In claims under state law for wrongful conviction and imprisonment, the phrase "the charges were dismissed" in the governing statute means both terminating the criminal accusation presented in court and relieving the defendant of the accusation's criminal liability.

> *Matter of Mashaney*, 319 Kan. 673, 557 P.3d 1231 (Oct. 25, 2024).

CAUSATION. To receive compensation for a wrongful conviction, a claimant is required to prove actual innocence by a preponderance of the evidence under the statutory elements of the charged crime. The crime of conviction is defined by statute and is not limited to the specific facts of the charging document.

> *Matter of Warsame*, 320 Kan. 92, 563 P.3d 1281 (Feb. 14, 2025).