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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000943-MR

MARGARET H. BROWN AND
MARGARET BROWN AS
ADMINISTRATOR AND PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ROY MARSHAL JEFFRIES — APPELLANTS

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 07-CI-02439

PHILLIP KERR AND
JUDY KERR — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE AND MOORE, JUDGES; BUCKINGHAM,[1] SENIOR JUDGE.

[1] Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

MOORE, JUDGE: This case involves a claim for recovery by Margaret H. Brown for her son's tragic death. Mrs. Brown appeals on her own behalf and as the administrator and personal representative of the estate of her son, Roy Marshal Jeffries. She sought recovery in Hardin Circuit Court for negligence and for the mishandling of Roy's body from Phillip and Judy Kerr, the parents of Clayton Tae Kerr, the young man who killed Roy. The court entered summary judgment for the Kerrs.[2] After a careful review of the record, we affirm and agree with the circuit court that the Kerrs had no duty of care because Clayton's actions were not foreseeable and because KRS[3] 311.330 does not apply in this case.

I. FACTUAL AND PROCEDURAL BACKGROUND

Phillip and Judy Kerr are the parents of Clayton Tae Kerr. Clayton lived with his parents and was one day shy of being twenty-years old when the incidents that resulting in this lawsuit occurred. Clayton testified that when he woke on the morning of January 27, 2007, he started the day like every other morning for a year--with a "line" of cocaine in his bedroom at his parents' home. He then "[ate] five two-milligram bars of Xanax." Sometime after noon, he drove his girlfriend to work. He came back to his parents' home, drank a fifth of straight whiskey with crushed Lortabs in it, snorted cocaine, and "[took] more Xanax bars." He also smoked two marijuana joints outside of the home. Around 6:00

[2] Although Mrs. Brown filed the complaint against Clayton and his parents, only the claims against the Kerrs are involved in this appeal. Mrs. Brown's claims against Clayton are presumably still pending in the circuit court.

[3] Kentucky Revised Statute.

p.m., Clayton left to go to a job hanging drywall where he only spent about fifteen minutes because there were not any nails to hang the drywall.

Clayton thereafter went to Roy's apartment, where he smoked more marijuana. The marijuana "hit [him] a little harder than normal" making him "start seeing stuff" such as flashes of color. His blood pressure ran up and down while his heart raced. This experience lasted for about two hours. He believed the marijuana had crack cocaine in it because this reaction was very similar to other reactions he had when he smoked marijuana laced with crack cocaine.

At some point, which is unclear from the record but while Clayton was still high on the crack cocaine laced marijuana, Clayton and Roy went to Clayton's parents' farm. While there, Clayton shot Roy in the back of the head with a .22 caliber handgun; Clayton stole the handgun from his parents' locked gun cabinet. Roy died as a result of the gunshot to his head. After killing Roy, Clayton buried Roy's body in a shallow grave that he had dug on the Kerrs' property.

When Roy did not come to work on January 30, 2007, his manager called Mrs. Brown to report that he was missing. That same day, Mrs. Brown, filed a missing person report with the Larue County Sheriff's Department. She also created a flier and began placing it all around the area where Roy lived and worked.

On the afternoon of Sunday, February 4, 2007, Clayton told his parents that he had killed Roy. The Kerrs learned that same evening that Roy's body was buried on their property. Neither of Clayton's parents is certain exactly

who contacted an attorney on Clayton's behalf, but it was likely one of their daughters. That evening Clayton met with the attorney. Both of the Kerrs testified that the attorney was contacted to determine how to contact the authorities and Roy's family about the situation and to help Clayton.

The following day, February 5, 2007, Clayton's attorney met with the Kentucky State Police (KSP) and the Hardin County Commonwealth Attorney to discuss a plea deal. Mrs. Brown was contacted by KSP officers and told that they had a person of interest who had information on what happened to Roy. The officers told Mrs. Brown that if she agreed to a plea of manslaughter because the shooting was accidental, the person of interest would cooperate with police and show them where Roy's body was. Mrs. Brown did not believe it was fair that this information could be used as a "bargaining chip" but did not believe she had any other choice. So long as the person of interest would receive the maximum sentence to the manslaughter charge, she was agreeable the deal.

Around 10:00 a.m. on February 6, 2007, KSP troopers arrived at Mrs. Brown's home and told her that they had located Roy's body. Clayton entered into a plea deal to manslaughter and told the authorities where Roy's body was buried.

Mrs. Brown filed a complaint in the circuit court against Clayton and his parents. She alleged, *inter alia*, that the Kerrs owed her a duty not to interfere with her right to possess Roy's dead body and to not mishandle his dead body. Mrs. Brown also asserted that the Kerrs owed Roy a duty of care because the harm he suffered was foreseeable based on Clayton's past with drugs and violence. She

further contended that the Kerrs owed Roy a duty of care as a licensee on their property.

The Kerrs filed a motion for summary judgment, and the circuit court granted their motion. Mrs. Brown now appeals. Finding no error by the circuit court, we affirm.

II. STANDARD OF REVIEW

"The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment should be "cautiously applied . . . in actions involving allegations of negligence." *Poe v. Rice*, 706 S.W.2d 5, 6 (Ky. App. 1986) (citations omitted). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). "Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact." *Id*. Further, "the movant must convince the court, by the evidence of record, of the nonexistence of an issue of material fact." *Id*. at 482.

III. ANALYSIS

Mrs. Brown first alleges that the Kerrs owed her, as Roy's next of kin, a duty not to interfere with her right to possess his dead body and to not mishandle

his dead body. She claims that the Kerrs knew on the evening of February 4 that Roy was buried on their property, but she was not notified until the morning of February 6 of the location of Roy's body. Mrs. Brown claims that pursuant to KRS 311.330, the Kerrs were required to notify her of Roy's death and the location of his body.

Kentucky Revised Statute 311.330 provides as follows:

> Any superintendent, warden, coroner or other person having in his possession an unclaimed human body, shall notify any known relatives or friends of the deceased person of the death and place where the body is. If no such friend or relative claims and buries the body within three (3) days, the person shall deliver the body to the professor of a college or school entitled to it under this chapter who demands it. Such professor shall at once embalm the body and preserve it for thirty (30) days before dissecting it. During the thirty (30) days the college or professor thereof, shall deliver the body, without charge, to any friend or relative of the deceased who demands it for interment. If it is not claimed during the thirty (30) days the professor and students may examine and dissect it.

She relies on KRS 446.070 as a mechanism for damages for the breach of the notification requirements under KRS 311.330. This statute provides that "[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

"When interpreting a statute, we look to the statute's express language and overall purpose." *Brown v. Commonwealth*, 40 S.W.3d 873, 875 (Ky. App. 1999). "The task begins with the language of the statute itself. When a statute's

language is plain, the sole function of the courts is to enforce it according to its terms." *Id*. (internal quotation marks omitted).

Although KRS 311.330 provides that "[a]ny superintendent, warden, coroner *or other person* having in his possession an unclaimed human body, shall notify any known relatives . . . of the deceased person of the death and place where the body is," the fact that Roy's body was buried somewhere on the Kerrs' farm does not render them the "possessors" of his body. Further, it appears the General Assembly intended for KRS 311.330 to apply only to those people who, in the course of their profession, find themselves in possession of an unclaimed human body, as is evidenced by the statute's reference to superintendents, wardens, and coroners. The statute continues, detailing the procedure for those people to hand over the unclaimed human body to a college professor or school that has requested the body, and what that professor or school is to do with the body once it is in their possession. Thus, we do not believe the General Assembly intended for KRS 311.330 to apply to situations such as occurred in this case.

Hazelwood v. Stokes, 483 S.W.2d 576 (Ky. 1972), which is cited in Mrs. Brown's brief, does not support her claim. *Hazelwood* is distinguishable from the present case because there the people who allegedly mishandled the body worked for a funeral home and had the body at issue in their possession. Thus, the defendants in *Hazelwood* not only possessed the body, but they were people who, in the course of their occupations, came to be in possession of a body. Both of which are required for the application of KRS 311.330. Therefore, *Hazelwood* is

distinguishable from this case, and we find that KRS 311.330 was not intended to apply under the unfortunate facts of this case.

Mrs. Brown next asserts that the Kerrs were negligent because the harm Roy endured was foreseeable, considering that Clayton had a past of violent propensities, disregard for the law, and alcohol and drug abuse and that Clayton was in a highly intoxicated and drug impaired condition when he shot Roy. [4]

A negligence case such as this "requires proof that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached the standard by which his or her duty is measured, and (3) consequent injury." *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 88 (Ky. 2003). Whether a party had a duty of care is a question of law. *See Mullins v. Commonwealth Life Insurance Co*., 839 S.W.2d 245, 248 (Ky. 1992). The duty applies "*only* if the injury is foreseeable." *Lee v. Farmer's Rural Electric Cooperative Corp.*, 245 S.W.3d 209, 212 (Ky. App. 2007) (internal quotation marks omitted). "[F]oreseeability is to be determined by viewing the facts as they reasonably appeared to the party charged with negligence, not as they appear based on hindsight." *Lee*, 245 S.W.3d at 212 (internal quotation marks omitted).

> Foreseeability inquiries are often complicated by the tendency to confuse foreseeability and proximate cause. Whether a harm was foreseeable in the context of determining duty depends on the general foreseeability of such harm, not whether the specific mechanism of the harm could be foreseen. . . . In determining whether an

[4] We will only discuss here the foreseeability of the events in this case because Margaret does not argue that any type of special relationship existed. Indeed, there does not appear to be a special relationship at issue that would allow for a recovery.

> injury was foreseeable, we look to whether a reasonable person in a defendant's position would recognize undue risk to another, not whether a reasonable person recognized the specific risk to the injured party. . . .
>
> Foreseeable risks are determined in part on what the defendant knew at the time of the alleged negligence. The actor is required to recognize that his conduct involves a risk of causing an invasion of another's interest if a reasonable man would do so while exercising such attention, perception of the circumstances, memory, knowledge of other pertinent matters, intelligence, and judgment as a reasonable man would have.

Id. at 212-13 (internal quotation marks omitted and emphasis removed). This Court has explained the term "knowledge of other pertinent matters" as follows:

> For the purpose of determining whether the actor should recognize that his conduct involves a risk, he is required to know (a) the qualities and habits of human beings and animals and the qualities, characteristics, and capacities of things and forces in so far as they are matters of common knowledge at the time and in the community; and (b) the common law, legislative enactments, and general customs in so far as they are likely to affect the conduct of the other or third persons.

Id. at 213 (internal quotation marks omitted and emphasis removed).

Mrs. Brown contends that the harm to Roy was foreseeable because Clayton had a past of violent propensities, disregard for the law, and alcohol and drug abuse. The "violent propensity" to which she refers concerns an incident from when Clayton was twelve years old. He pulled a knife on his parents, cutting Mrs. Kerr on the chin and the finger and cutting Mr. Kerr on the shoulders. When this incident took place, Clayton was attempting to run away and his parents were attempting to stop him. Clayton thereafter received therapy until three or four

years before he killed Roy. Because this isolated incident occurred six years or more before Clayton killed Roy, it does not render Roy's homicide foreseeable.

Mrs. Brown also asserts that Clayton had a past of disregard for the law and alcohol and drug abuse, and because he had used drugs and drank alcohol on the day of the homicide, the killing of Roy was foreseeable. Clayton testified in his deposition that he had alcohol, marijuana, Xanax, Lortabs,[5] and cocaine in his system on the day he killed Roy. He further testified that he thought the marijuana he smoked at Roy's house before killing him about thirty minutes later had something else in it, such as crack cocaine. When Mrs. Brown alludes to Clayton's past history of disregard for the law and alcohol and drug use, she is referring to past incidents when Clayton took his prescription medication to school; he was in possession of marijuana in high school; and he was under the influence of marijuana and Xanax in high school.

Mrs. Kerr testified in her deposition that she suspected Clayton occasionally smoked marijuana, but she never saw him with marijuana. She further attested that she never saw Clayton "high" on drugs, and she never smelled alcohol on him. The Kerrs did not consume alcohol or keep it at their home. Clayton was aware of this. Mrs. Kerr did not notice anything different about Clayton on the day he killed Roy and had no reason to search his room or otherwise question his behavior. She also testified that she had never met Roy.

[5] The Lortabs had been prescribed to Clayton, but the Xanax was not.

Mr. Kerr attested that he never suspected Clayton of having a drug or alcohol problem, and he never saw Clayton passed out from using drugs or alcohol.

Clayton testified in his deposition that he did not think his parents were aware that he was using drugs around the time of the homicide. He hid his drugs in an area in a closet in his bedroom where he cut out a section from a wall. Taking the evidence in a light most favorable to Mrs. Brown, it was not foreseeable that the Kerrs had notice of the level of Clayton's drug use when he killed Roy.

Even if we assume that the Kerrs had notice of Clayton's extensive drug use, this does not make it foreseeable that Clayton would commit a homicide. There is no evidence that he exhibited violent propensities at the time he killed Roy. Therefore, Mrs. Brown cannot show that the killing of Roy was foreseeable based on those allegations.

Mrs. Brown further contends that Clayton's act of breaking into his parents' gun cabinet to steal the gun that he used to kill Roy was foreseeable considering his alleged past disregard for the law and the fact that he had previously broken into the cabinet one time. The gun cabinet was made of solid stainless steel, it had two bolt locks that required two keys to open it, and it had no windows. The Kerrs kept it in their bedroom and kept the door to the bedroom locked.

Approximately one year before he killed Roy, Clayton found the keys to the gun cabinet and opened it. When he opened the gun cabinet at that time, he

stole some of his parents' medications[6] and money. The Kerrs knew that he stole those things from the gun cabinet at that time and, therefore, they began wearing the keys to the cabinet on their persons. They also put a lock on the outside of their bedroom door because the cabinet was stored in that room and because Clayton stole money from them. So, Mrs. Kerr kept her purse in her locked bedroom when she was at home.

About a month before killing Roy, Clayton made a key to the gun cabinet's locks by shoving a metal piece from an ink pen and soap into the tumblers of the locks, pulling them out, and fashioning a key out of the shape. He broke into his parents' gun cabinet and stole his uncle's gun, which was being stored in the bottom of the cabinet underneath some papers and prescription medications. Clayton testified that he originally stole the gun with the intention of trading it for drugs, but he wanted to make certain that the gun worked first. The gun was not loaded, but there was ammunition for it in the gun safe,[7] so he took two rounds of ammunition, tested the gun, and discovered that it worked. He kept the gun for the next month either in his pocket or under his bed, and his parents did

[6] Mrs. Kerr testified that she kept medications in the gun cabinet because she had a grandson who "would get into everything" when he visited them, and she was concerned that he would get into the medications. She also attested that Clayton had taken some medication previously, and she did not want him to do that again. So, she kept the medication in the gun cabinet.

[7] The ammunition used to kill Roy did not come from the gun cabinet. Clayton testified that his former brother-in-law had given him a box containing the bullets and various other items, such as knickknacks, three or four years he killed Roy. He was not even certain that his former brother-in-law knew the box contained the ammunition. Clayton kept this box that contained the ammunition in the garage, and he did not think that his parents were aware that he had the ammunition.

not realize that it was missing from the cabinet. Mrs. Kerr testified that she had actually forgotten about the gun even being in the cabinet.

The fact that the Kerrs placed a lock on their bedroom door and began carrying the keys to the gun cabinet on their persons in order to prevent Clayton from breaking into the cabinet in no equates to foreseeability that Clayton would fashion a key to the cabinet out of pen parts and soap in order to break in and steal the gun. Furthermore, although Clayton stole the keys to the gun cabinet to steal money or medication, this also does make it foreseeable that he would take a gun from the cabinet. Nothing in Clayton's past linked him to stealing a gun, and other than the knife incident when he was twelve years old, there was no evidence in the record to suggest that it was foreseeable that Clayton would violently harm another or use a gun to kill someone. The prior incident was too remote in time for foreseeability. Moreover, this Court has held that "[t]he law does not view as foreseeable the intentional criminal acts of a third party when considering the position of the gun owner from whom the weapon is stolen." *James v. Wilson*, 95 S.W.3d 875, 885 (Ky. App. 2002). Although the gun in the present case was not loaded when it was in the cabinet, we nevertheless note that the Court in *James* also stated that "it is not the law of the Commonwealth that a loaded gun is an inherently dangerous instrumentality." *Id*. at 886. Therefore, Clayton's act of stealing the gun and using it to kill Roy was not foreseeable. Consequently, because Clayton's actions were not foreseeable, Mrs. Brown's claim that the Kerrs owed a duty of care to Roy lacks merit.

We turn to an issue raised briefly by Mrs. Brown regarding the Kerrs' duty as parents of Clayton to prevent him from causing injury to another. As a matter of law, we find that the Kerrs were under no such obligation.

Mrs. Brown cites to three cases: *Jupin v. Cask*, 849 N.E.2d 829 (Mass. 2006); *Heck v. Stoffer*, 786 N.E.2d 265 (Ind. 2003) and *Moore v. Lexington Transit Corp*., 418 S.W.2d 245 (Ky. 1967). We find neither the two cases from outside Kentucky unpersuasive. Moreover, all three cases are highly distinguishable from the case at hand.

In *Jupin*, which involved an adult child, the court determined that the shooting was a foreseeable consequence of not insuring the proper storage of firearms. The adult child in *Jupin* was mentally unstable and violent and had unfettered access to his parents' home. The parents had a homemade gun cabinet that could be opened without a key. As an adult, the son had two prior arrests for assault. Based on these circumstances, the court found that it was both foreseeable and foreseen that the son might use a gun from his parents' home to harm someone.

Regarding the *Heck* case, the adult child's (Timothy) turbulent life started when he was in the tenth grade in high school. Over a nine-year period, Timothy was charged with and/or convicted of numerous crimes, *inter alia*, battery, burglary, theft, drug possession, and resisting arrest. He had bounced between probation and incarceration, as well as court-ordered counseling for drug addiction. Ultimately, he killed a police officer using a firearm his parents stored

under the cushions of a couch at their home. At that time, the parents were helping Timothy avoid arrest and knew of his troubled past, including the charges for resisting arrest.

While Clayton had trouble in his past, it was not comparable to the situations in *Jupin* or *Heck*. And, while Clayton had problems in the past, both of his parents testified they were not aware of any problems he was having anywhere near the time of the shooting. Thus, we did not find *Jupin* or *Heck* persuasive on the facts.

Furthermore, under *James*, 95 S.W.3d 875, both *Jupin* and *Heck* are distinguishable pursuant to Kentucky law. In *James*, this Court previously held that even a loaded gun is not inherently dangerous and that intentional criminal acts are not foreseeable "when considering the position of the gun owner from whom the weapon is stolen." *Id.* at 885.

Even absence the *James* case, *Jupin* and *Heck* are further distinguishable because the gun cabinet here was very secure. It simply was not foreseeable that Clayton would use parts from a pen and a bar of soap to open it.

Moore, 418 S.W.2d 245, also does not support Mrs. Brown's case, She argues, that pursuant to *Moore*, parents have a duty of reasonable care to prevent their children from causing harm to another when they are on notice of prior acts that have the potential to injury another. *Moore* involved a minor child; not an adult child. There is no jurisprudence in Kentucky, that absent a special relationship, parents are responsible for their adult children's actions. To the

contrary, the case of *Whitesides v. Wheeler*, 158 Ky. 121, 164 S.W.335 (1914) is highly illustrative of this point.

Whitesides, involved an adult son who lived with his mother. When he was nineteen years of age, he cut an individual with a pocketknife. He was thereafter adjudged insane and sent to an insane asylum for a year. Upon his release, he lived with his mother. At the age of 32, the son shot a handyman who was painting the mother's home. The handyman brought suit against the mother, alleging that the mother knew the son was dangerous; that he kept deadly weapons; and that she knew or could have known that the son might cause injury to someone as a result.

The trial court in *Whitesides* directed a verdict for the mother. The analysis in the case is directly on point and useful for disposition of the issue before the Court. Because it is succinctly stated and there being no reason to rewrite it, we quote it as follows:

> If the defendant knew that her son had this weapon, and if his condition of mind was such that she knew, or in the exercise of ordinary care could have known, that injury to others might result therefrom, then she was guilty of negligence, and answerable in damages to the plaintiff. *Meers v. McDowell*, 110 Ky. 926, 62 S. W. 1013, 23 Ky. Law Rep. 461, 53 L. R. A. 789, 96 Am. St. Rep. 475. Or, if she knowingly permitted the weapon to remain in a place accessible to him, and knew, or in the exercise of ordinary care could have known, that danger to others might result therefrom, she was guilty of actionable negligence. But there is no proof in the record that she knew that he had the weapon, nor is there any proof that she knowingly permitted it to remain in a place accessible to him.

But appellant contends that, because of the mental condition of her son, the appellee was charged with the duty of exercising such character of restraint over her son as would have prevented his obtaining possession of a weapon, and that she is therefore guilty of negligence.

If his condition of mind was such that he was dangerous, or that danger to others might reasonably be expected, it might be conceded that it was the duty of appellee while her son was in her custody and under her control to have used such measures of restraint and control as would have resulted in rendering it impossible for him to have procured possession of a weapon. While no authority upon this point has been brought to our attention, we think the principle analogous to that of the law of secondary trespass, which holds the owner of a domestic animal answerable in damages for injuries done by such animal when the vicious nature of such animal is known to such owner.

But we find in the record no proof sufficient to charge appellee with the duty of exercising so great a measure of restraint over her unfortunate son. The only overt act of violence upon his part, disclosed by the evidence, is that which occurred 10 or 12 years before the appellant was shot, and after which appellee's son was confined in the insane asylum, and was released in about a year, as recovered.

It is true that appellant offered to prove that people generally regarded [the son] as a man of unsound mind, dangerous, and with homicidal tendencies. But this evidence was not competent. The only purpose such testimony could serve would be to charge appellee with the duty of exercising unusual measures of restraint over her son, and testimony as to how other people regarded his mental condition was not competent for that purpose. Nothing but proof of overt acts of violence was competent upon that issue, and, even with such proof, appellee would not be answerable in damages for the injuries to recover damages for which this action was brought, unless actual knowledge of such overt acts of

> violence was brought home to appellee, or the character of the evidence in that respect was such as to raise a presumption of such knowledge upon her part.

As in *Whitesides*, the evidence in this matter is that the Kerrs did not know that Clayton had the weapon used in the shooting. And while the Court in *Whitesides* uses the term "custody," there is no evidence from which this Court would assume that Clayton was in the "custody" of his parents. Accordingly, there is no legal foundation to hold the Kerrs liable for the actions of their adult son.

Finally, Mrs. Brown alleges that the Kerrs owed a duty of care to Roy as a licensee or social guest on their property and that they breached this duty of care by failing to discover that Clayton had stolen the gun and ammunition. A social guest is considered a licensee in Kentucky for purposes of determining the duty of care owed to such a person. *See Shipp v. Johnson*, 452 S.W.2d 828, 829 (Ky. 1969). A property owner "owes a licensee only the duty to warn him of a dangerous condition *already known* to the possessor." *Mackey v. Allen*, 396 S.W.2d 55, 58 (Ky. 1965).

This argument is a stretch at best in an apparent attempt to find an avenue for relief. Nonetheless, the Kerrs did not know that Clayton stole the gun--as admitted by Mrs. Brown when she claimed that they *failed to discover* that Clayton had taken the gun. Therefore, there is no merit to this claim.

Admittedly, this is tragic case for Mrs. Brown. However, there is no legal foundation for a recovery against the Kerrs. Accordingly, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

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