

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002359-MR

SHARON VITTITOW

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM GRAHAM, JUDGE  
ACTION NO. 98-CI-00145

COMMONWEALTH OF KENTUCKY, JUSTICE  
CABINET, DEPARTMENT OF STATE POLICE  
AND COMMONWEALTH OF KENTUCKY  
BOARD OF CLAIMS

APPELLEES

### OPINION

### AFFIRMING

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BEFORE: KNOPF, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Sharon Vittitow brings this appeal from an August 25, 1998, order of the Franklin Circuit Court. We affirm.

The facts are these: It appears that from January 1, 1996, to September 21, 1996, appellant and one Carlos Bryant resided together in Shepherdsville, Kentucky. On January 20, 1996, appellant contacted the Bullitt County Dispatch Office and allegedly advised them that she was being abused and/or threatened by Bryant. Officers from the Bullitt County Sheriff's Office and the Kentucky State Police (KSP) responded. The Dispatch Office allegedly classified the call as a "man with a

gun." No arrest was made in response to this call. On July 30, 1996, and again on August 7, 1996, appellant made additional calls to the Dispatch Office requesting assistance due to Bryant's abusive and threatening behavior. Officers from the Bullitt County Sheriff's Office responded, but KSP did not respond to these subsequent calls. On September 21, 1996, Bryant severely beat appellant, causing her serious physical injury. On September 16, 1997, appellant filed a complaint in the Board of Claims against KSP. Ky. Rev. Stat. (KRS) 44.070. Therein, appellant contends KSP breached its statutory duty to notify the Kentucky Cabinet for Human Resources, Department of Social Services, of suspected domestic violence pursuant to KRS 403.785. Appellant alleged that the breach of this duty was the "proximate cause" of injuries she sustained on September 21, 1996. KSP filed an answer and a motion to dismiss. KSP argued that appellant's claim was time barred under KRS 44.110 and that KSP owed no duty to appellant. Without ascribing a basis, the Board of Claims summarily dismissed the claim on December 18, 1997. Appellant sought review in the Franklin Circuit Court. KRS 44.140. The circuit court affirmed the Board of Claims on August 25, 1998, stating that the claim was time barred and, additionally, the KSP could suffer no liability inasmuch as its response to Vittitow's complaints called for a discretionary act.

It appears that KSP's only contact with Vittitow was on January 20, 1996. If KSP is to be charged with negligence, it must emanate from that occurrence. Vittitow's claim, however, was not filed until September 16, 1997, well outside the one-year

limitations period set forth in KRS 44.110(1). It is immaterial that Vittitow's injuries did not occur until September 21, 1996. Under the circumstances herein, her claim accrued, if at all, on January 20, 1996, when KSP allegedly failed to follow the mandates of KRS 403.785. Additionally, we do not view the discovery provision of KRS 44.110(3) applicable. Indeed, KSP's supposed negligence and the resulting injury were not latent. As such, we are of the opinion that Vittitow's action in the Board of Claim was untimely under KRS 44.110(1).

We perceive Vittitow's remaining contention moot.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Wendi M. Swinson  
David B. Mour  
Jeffrey A. Cross  
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BRIEF FOR APPELLEE/JUSTICE  
CABINET:

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APPELLEE BOARD OF CLAIMS  
Not represented by counsel