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Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002666-MR

BART ALLEN ADKINS and CLELAND BLAKE, M.D. — APPELLANTS

v.

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
ACTION NO. 97-CR-00126

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BARBER, COMBS, and MCANULTY, Judges.

COMBS, JUDGE: Bart Allen Adkins appeals from an October 6, 1999, judgment of the Bullitt Circuit Court. A jury verdict found him guilty of manslaughter in the second degree (Kentucky Revised Statutes (KRS) 507.040), and the court sentenced him to serve eight years in prison.

Adkins was charged with murder in the death of sixteen-month-old Breanna Noe. He claims that the trial court erred in: (1) denying his motion to change venue, (2) admitting into evidence his statement to police, and (3) excluding the opinion of his expert witness concerning the time of the injury to the

child. Adkins also claims that he was entitled to a directed verdict of acquittal because the Commonwealth failed to prove the cause of Breanna's death according to a reasonable medical probability. Finally, Dr. Cleland Blake has joined Adkins's appeal in order to address the trial court's ruling with respect to the proper amount of his fee. Our review of the record convinces us that the trial court did not abuse its discretion in any of its rulings challenged in this appeal; thus, we affirm the judgment in all respects.

Adkins was a twenty-six-year-old police officer employed by the Pioneer Village Police Force. He had lived with Breanna's mother, Christy Tracy, and Breanna's twin brother, Blake Noe, for a little more than a month when Breanna died on November 26, 1997. On the day of her death, Adkins had arrived home from work at about 6:30 in the morning. An hour later, Tracy left for work, leaving both Breanna and Blake, who were asleep in their cribs, in Adkins's care. At 12:30 that afternoon, Adkins called 911 because Breanna was not breathing. The child was transported to a hospital in Louisville where she died later that evening.

After Breanna's death, Adkins exhibited signs of depression and anxiety and expressed suicidal comments. He voluntarily admitted himself to the psychiatric unit at Norton Hospital and was placed under a suicide watch. In the meantime, an autopsy revealed that Breanna had died from a closed head injury as a result of having been violently shaken. The next evening, Kentucky State Police detectives, Robert Melton and

David Lee, went to the hospital to talk with Adkins. He originally told the police that he had found the child limp and unresponsive; that he picked her up and shook her in an effort to revive her; and that he then performed CPR and called for help. When the investigators intimated their disbelief at this account, Adkins then admitted that Breanna had been crying and that he lost control and shook her to get her to be quiet. The detectives taped a portion of the interview with Adkins in which he admitted shaking Breanna.[1] He was arrested the next day and was eventually sent to the Kentucky Correctional Psychiatric Center (KCPC) for a psychological evaluation.

Despite his statement to the police detectives, Adkins nonetheless maintained that he was innocent. He hired Dr. Cleland Blake as an expert witness to review the postmortem examination of Breanna and various other materials. Dr. Blake concluded that Breanna did indeed die as a result of having been shaken. However, based on the degree of inflammatory response in the skin and scalp and the development of lamellation (layering) in the blood clot that formed as a result of the shaking, Dr. Blake opined that the interval between the shaking of Breanna and the time of her death had to exceed ten or twelve hours. After receiving Dr. Blake's report, the Commonwealth moved for a hearing pursuant to Daubert v. Merrill Dow Pharmaceuticals, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). At the

[1]Although the tape-recorded statement was introduced at Adkins's trial, there is no transcription of the statement anywhere in the record. Thus, we cannot assess the full impact of Adkins's confession.

conclusion of the hearing, the trial court ruled that Dr. Blake could not testify "as to a specific dating of the thrombus that developed as a result of the injury to Breanna."

Adkins also made two pre-trial motions *in limine*: one to suppress his statement given to police officers the day after Breanna's death and the other to obtain a change in venue. A hearing on both motions was conducted on November 16, 1998, and both motions were denied. Adkins was eventually tried in August 1999. Instructed that it could find Adkins guilty of murder, second-degree manslaughter, or reckless homicide, the jury found him "not guilty" of the crime of murder but convicted him under the instruction on second-degree manslaughter. Adkins's motion for a new trial was denied on October 6, 1999, at which time the sentence recommended by the jury was imposed by the court. Dr. Blake, who had already been paid $6,700 for his services as Adkins's expert, filed a motion and affidavit seeking an additional $11,540.93 for his services. The trial court approved only $3000 of the additional amount sought. Adkins and Dr. Blake filed a joint notice of appeal on November 3, 1999.

Adkins first argues that the trial court erred in denying his motion for a change of venue. He contends that the case was "one of the most, if not the most, publicized case before the Bullitt Circuit Court in a generation. Press coverage was extensive." In making his case for a change of venue, Adkins called several witnesses who testified that they did not believe that he could get a fair trial in Bullitt County.

The trial court denied the motion, concluding that the testimony was "not sufficient" to order a change of venue and observed that "[m]any of the witnesses who are also law enforcement officers related that they had heard that the Defendant would be convicted because he was a police officer and not because of any pre-trial publicity." However, the trial court's order provided that if it became apparent during *voir dire* that "there has been prejudicial news coverage occurring prior to trial and that the effect of such news coverage is reasonably likely to prevent a fair trial," the court would "reconsider" granting the motion.

Change of venue is an issue resting soundly within the discretion of the trial court: "[w]hether to grant a change of venue is within the sound discretion of the trial court." Gill v. Commonwealth, Ky., 7 S.W.3d 365, 369 (1999); see also, Whitler v. Commonwealth, Ky., 810 S.W.2d 505, 507 (1991), adding that "[a]n examination of jurors on their voir dire is considered to be the best test as to whether local prejudice exists." It is firm precedent that a trial judge's decision as to whether pretrial publicity warrants a change in venue is to be accorded great weight on appellate review.

> The trial judge has wide discretion in granting a change in venue in criminal cases, on motion either of [the] defendant or [the] Commonwealth, in situations where it appears that a fair trial cannot be had. There must be a clear showing of abuse of that discretion before we will disturb the action of the trial court.

Hatton v. Commonwealth, Ky., 444 S.W.2d 731, 733 (1969); see also, Commonwealth v. Averitt, Ky., 241 S.W.2d 989 (1951). This

deference to the trial judge is based on the reasoning that he or she "is present in the county and presumed to know the situation." Montgomery v. Commonwealth, Ky., 819 S.W.2d 713, 716 (1991).

While there are "exceptional cases" in which "the degree and the bias of pretrial publicity can be so great so that prejudice may be presumed," Gill, at 369-370, a review of the record reveals that this is not one of those cases. Unlike the situation in the case of Jacobs v. Commonwealth, Ky., 870 S.W.2d 412 (1994), cited by Adkins, the trial court had no trouble selecting a jury to try Adkins. Adkins points out that nineteen of the original thirty-four prospective jurors "admitted knowing something about the case from media accounts." However, as stated in Montgomery, supra, the test is not whether the juror "may have heard, talked, or read about a case" but rather whether "there is a reasonable likelihood that the accounts or descriptions or the investigation and judicial proceedings have prejudiced the defendant." Montgomery, supra at 716, citing Brewster v. Commonwealth, Ky., 568 S.W.2d 232, 235 (1978). We cannot agree that the trial court abused its discretion in denying his motion for change of venue. Foster v. Commonwealth, Ky., 827 S.W.2d 670, 675 (1992).

Adkins next argues that the trial court clearly erred in failing to suppress his tape-recorded statement made to the police detectives. Although Adkins was given his Miranda[2]

[2]Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

warnings and signed a waiver acknowledging that he understood those rights, he contends that he was in a catatonic state and that the medical evidence established that he was "not able to make a knowing and intelligent waiver of his right[s]."

The record indeed reveals that the psychiatrists who treated Adkins during his brief stay in the hospital believed that at the time of his interview with the police, he did not have the requisite mental ability to make a knowing and intelligent waiver of his legal rights. Dr. Helen Davis testified that her observation of Adkins revealed that he was in an acutely distressed and was exhibiting "very disjointed thinking, poor information processing and poor decision making;" and that Adkins did not appear "to grasp the significance of what was going on in his current surroundings." When asked whether or not she believed Adkins was capable of making "a knowing and intelligent" waiver of his rights before giving his statement, Dr. Davis responded that the question was a difficult one for her to answer. She stated, however, that Adkins's "thinking at that point in time was not rational" and that "his capacity for rational decision making was diminished." This opinion was shared by Dr. Charles Rhoton, a psychiatric resident, who opined that Adkins was not in a position "to know what he was doing."

Similarly, Dr. Candace Walker, the psychiatrist who evaluated Adkins at KCPC, addressed the issue of Adkins's mental state at the time he had given his statement in her report:

> From the evidence we have, it does not appear that the patient was suffering from such a mental disease or defect that would invoke an insanity defense in any case at the time of

> the alleged crime. However, regarding the patient's mental status at the time that he gave the statement to the police, his status had markedly deteriorated after the child's death. He was described as "near catatonic" by physicians, unresponsive, and he was felt to be of such a high suicide risk that he was placed on maximal precautions under one to one observation at all times. His treating physicians did not consider him to be rational or acting in his own self-interest, and noted that his attention and concentration were impaired. . . Thus, my opinion about his incompetency at the time the statement was taken is in agreement with the treating physicians.

At the suppression hearing, Sgt. Lee testified that when he and Detective Melton arrived at the hospital the evening after Breanna died, a nurse requested that they obtain permission from Adkins's doctor before questioning him. Sgt. Lee contacted Dr. Davis by phone and obtained such permission. He stated that when he first entered Adkins's room, he informed Adkins of his rights and obtained a signed waiver of those rights. He further testified that Adkins willingly answered questions about the events of the day before. With reference to the issue of voluntariness, Sgt. Lee testified as follows:

> Q. Was there any reason for you to believe, at the time that you questioned him there in the hospital, that he was not able to give you -- or, that he was not able to understand his rights?
>
> A. No, sir, if I had thought that, I would have terminated the interview.
>
> Q. Did you feel that he didn't understand what he was telling you?
>
> A. No, sir, he didn't fail to answer a question. He didn't seem incoherent. As a matter of fact, when we left, he gave us rather lengthy directions. He wanted us to go to his mother's home and tell her what had

happened, which we did, but there was nobody at home.

. . .

Q. Did he ever, at any time, ask you to stop the questioning?

A. No, sir.

Q. Did he ever, at any time, ask that an attorney be present?

A. No, sir.

Q. Did you, in any way, coerce or put any pressure on him to talk to you?

A. No, sir.

Sgt. Lee's testimony was corroborated by that of Nurse Don Price, who was on duty in the psychiatric unit when the officers arrived to question Adkins. It was at Price's request that Sgt. Lee telephoned the attending physician for permission to talk to Adkins. Dr. Davis told Price that the officers could approach Adkins if Adkins agreed. Price accompanied the officers to Adkins's room and described the events which transpired then as follows:

Q. Who talked to Mr. Adkins about it?

A. I did, sir.

Q. And, what did you tell him?

A. I told him that there was two state police officers outside the unit, and I asked him if he wanted to meet with those individuals and answer questions.

Q. And, do you recall what he told you?

A. He wanted to answer -- he wanted to visit with the officers and answer questions.

Q. Okay -- now, initially, as the officer testified earlier, you went to the room with them?

A. Yes, sir.

Q. What was the purpose of you going to the room?

A. One is, as Dr. Davis mentions in her testimony, he was on high risk precautions, and there's usually a staff member with that individual at all times. And, I wanted to observe additionally whether or not the questioning was going to be adversarial in nature.

Q. Now, at some point, you left the room?

A. Yes, I did.

Q. Did you feel that the questioning was appropriate?

A. I did not feel it was adversarial.

Q. Okay — what do you mean by adversarial?

A. That they were coercive — being forceful.

Q. And, it didn't seem that way to you?

A. No, sir.

Q. While you were there, did they ever tell him that he was under arrest, or that they were going to arrest him?

A. They gave him his rights. They did not arrest him at that time, no, sir.

Q. Describe what you can recall about them giving him his rights.

A. That was initial thing that they did upon entering the room with Mr. Adkins.

Q. And, do you recall how they went about advising him of his rights?

A. They informed him that — they made a reference to the fact that he was a police officer, and that he — read him his rights.

Q. And, I'm not asking you what each and every right was, but . . .did they just read them off to him, did they give them to him one at a time, and discuss these things with him — how did they go about doing that?

A. I believe one was given at a time. . .

. . .

Q. Okay — and, you say they began talking to him and did not seem coercive or adversarial?

A. No, sir.

. . .

Q. Okay — did Mr. Adkins seem to have any problem answering the questions that were being asked of him?

A. Not at that time.

Q. Did he seem responsive more so than what he had been previously?

A. He was able to answer questions a little more than what he was for [the] nursing staff, as far as when we would approach him. Again, he was — he affect [sic] was flat. It was very difficult to get any — he didn't respond very well to any questions.

Q. All right — I'm sorry, he didn't respond very well to whose questions?

A. The nursing staff questions.

Q. The nursing staff?

A. Yes, sir.

Q. Did that seem different with the police officers?

A. Yes.

After weighing the testimony, the trial court denied the motion to suppress and determined that the statement had been voluntarily given and that Adkins "was able to coherently relate his version of the events that took place that resulted in his

indictment." Adkins focuses on his arguably impaired mental state exclusively without citing coercive activity by the two investigators. We can find no argument before the trial court or in his brief in this Court suggesting that the two police investigators engaged in any overreaching or coercive behavior. From our review of the record it appears that the officers were respectful of Adkins's rights and that their conduct during their questioning of him was in no way provocative or improper.

Adkins relies on Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986), in arguing that the trial court erred in denying his motion to suppress. He contends: "[t]he statement of a mentally ill defendant is involuntary and is inadmissible." (Appellant's brief, p. 10.) However, rather than supporting his argument, Connelly actually undermines it. In that case, the defendant suffered from "chronic schizophrenia and was in a psychotic state" the day before he confessed to police. 479 U.S. at 161, 93 L.Ed.2d at 480. Medical experts testified that his mental state interfered with his "ability to make free and rational choices." Id., 479 U.S. at 161, 93 L.Ed.2d at 481. Although the trial court found that "the police had done nothing wrong or coercive in securing the confession," it also found that the defendant's "mental state vitiated his attempted waiver of the right to counsel and the privilege against self-incrimination" and suppressed the confession. Id. The Colorado Supreme Court affirmed. In reversing, the U.S. Supreme Court held that

> [t]he cases considered by this Court over the 50 years since Brown v.

> Mississippi[, 297 U.S. 278 (1936)] have focused upon the crucial element of police overreaching. While each confession case has turned on its own set of factors justifying the conclusion that police conduct was oppressive, all have contained a substantial element of coercive police conduct. Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law. Respondent correctly notes that as interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the "voluntariness" calculus. See Spano v. New York, 360 U.S. 315 (1959). But this fact does not justify a conclusion that a defendant's mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional "voluntariness."
>
> . . .
> [W]hile mental condition is surely relevant to an individual's susceptibility to police coercion, mere examination of the confessant's state of mind can never conclude the due process inquiry. . . Respondent would now have us require sweeping inquiries into the state of mind of a criminal defendant who has confessed, inquiries quite divorced from any coercion brought to bear on the defendant by the State. . . .
>
> We hold that coercive police activity is a necessary predicate to the finding that a confession is not "voluntary" within the meaning of the due Process Clause of the Fourteenth Amendment. (Emphasis added.)

Id., 479 U.S. at 165-167, 93 L.Ed.2d at 482-484.

A similar result was announced more recently in Price v. Commonwealth, Ky., 31 S.W.2d 885, 890 (2000), in which the Court upheld the voluntariness of a confession by a defendant who claimed that he had confessed while in a "suicidal mental state." Reiterating that, absent a claim of "abuse, threats or

intimidation" perpetrated upon the defendant by police, the Court held that "the trial court's finding that the confession was voluntarily given is supported by substantial evidence and, thus, is conclusive." Id.

There is no allegation of police coercion or intimidation in the case before us — nor is there any evidence of improper conduct by Sgt. Lee and Detective Melton. On the other hand, there is sufficient evidence that Adkins was aware of his right to remain silent and that he understood that his right to request a lawyer when he gave his statement to police. Therefore, we hold that the trial court did not err in refusing to suppress the statement.

Adkins next argues that the trial court erred in excluding the opinion of Dr. Blake with respect to the interval of time between the injury sustained by Breanna and her death. Dr. Blake had studied the degree of layering in the blood clot in Breanna's head and the degree of inflammatory response. Based on that study, he believed that the shaking producing the convergence of fatal symptoms must have occurred more than 10 to 12 hours prior to her death. At the Daubert hearing, Dr. Blake's opinion had become even more favorable to Adkins. He testified that the shaking causing the injury took place "[w]ell beyond 12 hours. . . and possibly even longer than that;" he also testified: "I would say that it [the lamellation] would have been more than twelve or fifteen hours." This testimony is quite critical to Adkins's defense as it identified the assault to the

child as having occurred at a time when Adkins was at work and when Breanna was in her mother's care.

In limiting the scope of Dr. Blake's testimony, the trial court concluded as follows:

> The Court agrees with the Commonwealth and Dr. Blake, an eminently qualified pathologist, has an ability to be very convincing both with his demeanor and credentials, however, he bases his opinion that the injury to Breanna Shane Noe on his experience in the field of forensic pathology and on numerous tests, which he claims support his theory. On cross-examination, however, he was unable to site [sic] any authority that allows him to "date" a thrombus with a specificity that he gives in his opinion. None of the authorities sited [sic] by Dr. Blake discussed the formation of a thrombus and are not studies of exact times that which certain physical characteristics can be seen. Conversely, the very test on which he relies indicate [sic] that it is impossible to time the events relating to the development of the thrombus precisely and that all that can be expected is an approximation, most often expressed as days, weeks, or months.
>
> The Court further agrees with the Commonwealth that Dr. Blake's testimony does not meet the reliability factors as set out in Mitchell [v. Commonwealth, Ky., 908 S.W.2d 100 (1995)]. There are no indications that the theory or method being proposed has been tested, peer reviewed, or published. Likewise, Dr. Blake is unable to provide any known rate or error or provide information that the evidence has a particular degree of acceptance in the forensic pathology community.

This alleged error is subject to review under the abuse-of-discretion standard. Goodyear Tire and Rubber Company v. Thompson, Ky., 11 S.W.2d 575, 577-578 (2000). "A trial court's ruling on the admission of expert testimony is reviewed under the same standard as a trial court's ruling on any other

evidentiary matter." Id. at 578. However, in Daubert, supra, the United States Supreme Court articulated a more particularized standard for admissibility of scientific testimony. Daubert, 509 U.S. at 592, 113 S.Ct. at 2796, 125 L.Ed.2d at 482. Pursuant to Daubert, the trial court is now required to perform a two-step gatekeeping function when determining whether expert testimony should be admitted. The "basic gatekeeping obligation applies . . . to all expert testimony." Kumho Tire Co. V. Carmichael, 526 U.S. 137, 147-149, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999).

Specifically, the trial court must ensure that the proffered evidence is based on scientific knowledge, that it is reliable, and that it will assist the trier of fact. Goodyear, 11 S.W.3d at 578.

> The consideration of reliability entails an assessment into the validity of the reasoning and the methodology upon which the expert testimony is based. It is the inquiry into the reasoning and methodology where application of the Daubert and Mitchell factors comes most into play. We emphasize that the inquiry into reliability and relevance is a flexible one. The factors enumerated in Daubert and Mitchell are neither exhaustive nor exclusive. A trial court may apply any or all of these factors when determining the admissibility of any expert testimony.

Id., at 579.

In the case before us, the trial court applied the Daubert analysis in its evaluation of Dr. Blake's testimony. While recognizing Dr. Blake's impressive credentials, it concentrated its inquiry on whether his opinion with respect to the age of the thrombus — or clot — was reliable. The trial court examined the various treatises offered into evidence by

Adkins to support Dr. Blake's opinion that the clot was at a minimum older than twelve hours. Its order specifically recited that the necessary support was absent. Adkins argues that Dr. Blake's opinion was based on "well and clearly established" principles: "Blood clots lamilate over time. Neutrophils appear at the site of trauma over time." (Emphasis added.) However, while those general principles may be valid, the element of time involved in the clotting lacks the specificity upon which Adkins necessarily relies. The Commonwealth's expert, Dr. Tracy Corey Handy, testified that Dr. Blake's attempt to date the clot to such a degree of certainty was not possible given the current state of forensic knowledge:

> Q. Doctor, we have gone through probably some seven documents there and all of that to say what?
>
> A. The bottom line is that medicine cannot be as precise as we would like it. We cannot say that something is — must be over twelve hours old and couldn't be eight hours old. We are not at that point in our scientific discovery to be able to differentiate with that degree of certainly.
>
> Q. Do you know of any reference, any text, that is relied upon by the medical community to determine the interval of injury to death within the specificity as has been done by Dr. Blake?
>
> A. No, sir.
>
> Q. So, there are no peer-reviewed publications or articles that you know of that would allow such?
>
> A. I know of none, sir.
>
> Q. And do you know whether such evidence has any degree of acceptance in the medical community?

> A. The medical community — in the forensic pathology community in general states that the dating of injuries is imprecise. The dating of contusions is imprecise and the dating of injuries is imprecise. We can give generalized statements as multiple publications showed such as hours, or days, or weeks. But we cannot be as precise as the legal system would like us to be.
>
> Q. And as was presented by Dr. Blake?
>
> A. Yes, sir.

In his brief, Adkins refers to two articles which he claims support Dr. Blake's attempt to date the thrombus as more than twelve hours old. The first, entitled "Histological Aging of Thrombi and Emboli," was published in 1963 and concerns the evaluation of 143 thrombi, of which only 68 were of value for purposes of the study. The article begins with the admission: "The aging of thrombi and emboli comprises substantial theoretical problems." The article as a whole does not suggest that it is actually possible to date thrombi in general with scientific certainty or precision — even though it alludes to the age of various thrombi in terms of hours.

We are unable to find the second article to which Adkins refers. He has provided a citation to the Internet; however, he has not provided a citation to the record on appeal. We have scoured the entire record — including the materials introduced at the Daubert hearing — and have not discovered the article to which he refers. However, assuming, *arguendo*, that the article would provide a basis for Dr. Blake's opinion, we cannot conclude that the trial court abused its discretion in

excluding Dr. Blake's hypothesis in light of the medical literature in the record and in the testimony of Dr. Handy.

Adkins next contends that he was entitled to a directed verdict of acquittal because the Commonwealth failed to establish the cause of Breanna's death within a reasonable medical probability. We do not agree. Whether an expert's testimony is expressed in terms of a "reasonable probability" concerning the cause of death does not depend upon the semantics employed by the expert. See Turner v. Commonwealth, Ky., 5 S.W.3d 119, 122 (1999), which holds that the recitation of the "magic words 'reasonable probability'" are not required. Dr. Handy testified quite explicitly that the cause of Breanna's death was a closed head injury resulting from her having been shaken. Adkins's own expert, Dr. Blake, testified that "[a]ll findings are consistent with shaking." While the two experts disagreed on the time between the shaking and the onset of symptoms, there was no disagreement that Breanna's symptoms and death were the result of violent shaking. There was ample evidence for the jury to conclude that Adkins was guilty beyond a reasonable doubt. Thus, there was no error in the refusal of the trial court to direct a verdict of acquittal. Commonwealth v. Sawhill, Ky., 660 S.W.2d 3 (1983).

Finally, Dr. Blake contends that the trial court erred in failing to compensate him fully for his assistance in presenting Adkins's defense. We agree with the Commonwealth that much of Dr. Blake's time and effort were spent in an attempt to offer an opinion which we have held to have been properly

excluded. In all, Dr. Blake was paid $9,700 for his services. Under these circumstances, we are not persuaded that the trial court abused its discretion in its determination of the amount of the "reasonable and necessary" fees to be allowed. See McCracken County Fiscal Court v. Graves, Ky., 885 S.W.2d 307 (1994).

Accordingly, the judgment of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

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