

RENDERED: MAY 10, 2019; 10:00 A.M.  
TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2016-CA-001192-MR

COMMONWEALTH OF KENTUCKY,  
ENERGY AND ENVIRONMENT CABINET,  
DEPARTMENT FOR NATURAL RESOURCES

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE STEVEN D. COMBS, JUDGE  
ACTION NO. 15-CI-01190

HAROLD AND DORIS HARMON;  
RONALD ADKINS; BEVERLY ADKINS;  
HAROLD DEAN THACKER;  
GLORIA THACKER; ERVIN THACKER;  
KATHY THACKER; DONNIE ROWE;  
DONNA ROWE; KENNETH SHADRICK;  
CAROLYN SHADRICK; JOHN JONES;  
BETTY JONES; DONNA RODRIGUEZ;  
RONNIE G. THACKER; TERESA THACKER;  
BONNIE THACKER; LESTER "BO" SAYERS;  
EARL MEADOWS; BARBARA MEADOWS;  
JIMMY ONEY; WILMA ONEY;  
SHARON KEEN; PHILLIP R. SPEARS;  
BEATRICE G. SPEARS; HAROLD  
DWAYNE THACKER; FREDA THACKER;  
LARRY BLAIR; MARSHA BLAIR;  
WANDA THACKER; THOMAS G. THACKER;  
JOEY DAMRON; CLEARCY JANE DAMRON;  
LARRY A. EPLING; KATHY G. EPLING;

TROY DAMRON; JOYCE DAMRON;  
ANDY THACKER; IRIS THACKER;  
MARVIN SELLARDS; ROBERT CAUDILL;  
JANIE CAUDILL; RONALD RAY BLAIR;  
ELIZABETH BLAIR; PHILLIP THACKER;  
GEORGE JUSTICE; LORI JUSTICE;  
LARRY CRAIG RAY; DONNA RAY;  
MARTHA ADKINS; LONNIE MATNEY;  
RHONDA MATNEY; J.D. ADKINS;  
BERTHA ADKINS; JAMES WAYNE  
BLACKBURN; RITA BLACKBURN;  
GAYNELL MEADOWS; ELIZABETH  
SELLARDS; TERRY RAYE ADKINS;  
CARTER BLANKENSHIP; BETTY  
BLANKENSHIP; CHRISTOPHER  
ROBINETTE; ELSTER GENE MORTON;  
STEVE ADKINS; TAMMY ADKINS;  
SHARON GALE JUSTICE; ROBERT FARMER;  
BRENDA FARMER; SHERRY JUSTICE;  
SHIRLEY THACKER; MICHAEL DAMRON;  
CINDY DAMRON; MICHAEL RILEY;  
DIANA RILEY; MIKE RYAN;  
BEVERLY RYAN; THOMAS THACKER;  
INGRID THACKER; MICHAEL BRANDON SPEARS;  
SHERRY SPEARS; AGNES BEECHIE;  
LENA RAE ROWE;  
SHARON KEEN AS ADMINISTRATRIX OF THE  
ESTATE OF EMIT THACKER, MYRNA L. SPEARS;  
LAYTON SAWYERS, JR.; TERRY RILEY;  
MARY RILEY; RONNIE D. THACKER;  
RUTH ANN THACKER; PATRICIA THACKER;  
GERALD MARTIN; GLADYS MARTIN;  
BETHANY L. STEPHENS; PATSY HILTON;  
JUDY IRICK; FRED BLAIR; DARYL DENISE  
TAYLOR; BEVERLY MEADE; DOUGLAS SAYERS;  
VICTORIA SAYERS; ERVIN FARMER;  
CHARLEEN FARMER; BRITTANY JUSTICE;  
RANDALL HILL; WENDELL ROWE;  
NORMA ROWE; BRIAN BLANKENSHIP;  
JESSICA BLANKENSHIP; NADINE MCCOY;

STEPHEN COLEMAN; GARY A. SPEARS;  
KATHY SPEARS; DEWEY MCCOY;  
GEORGE KENNETH MCCOY, JR.;  
TIMOTHY MCCOY; TAMMY THACKER;  
DONALD HAMILTON; ANITA HAMILTON;  
JOYCE ANN BLANKENSHIP;  
AND LILLIAN DAMRON

APPELLEES

OPINION  
REVERSING

\*\* \*\* \* \*\* \* \*\*

BEFORE: ACREE, MAZE, AND NICKELL, JUDGES.

ACREE, JUDGE: The Kentucky Board of Claims<sup>1</sup> dismissed the Appellees' tort claims against the Energy and Environment Cabinet, Department of Natural Resources (the Cabinet) as barred by the one-year limitation contained in KRS<sup>2</sup> 44.110. The Pike Circuit Court reversed the Board's decision, finding the Appellees' claims were properly before the Board because of Kentucky's "savings statute," KRS 413.270, and remanded the case to the Board for appropriate proceedings. We reverse the circuit court and reinstate the Board's order dismissing.

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<sup>1</sup> The Board of Claims and the legislation creating it have been subsumed by legislation creating the Kentucky Claims Commission. 2017 Ky. Acts Ch. 74 (HB 453), enacted as KRS Chapter 49. All relevant provisions were included in the successor legislation verbatim. Because the claims were brought under the prior statutes, we apply the predecessor legislation.

<sup>2</sup> Kentucky Revised Statutes.

## **FACTS AND PROCEDURE**

Appellees are residents of the Harless Creek community of Pike County, Kentucky. On July 17, 2010, that community experienced torrential rainfall and flooding. The flood caused Appellees significant losses of personal and real property.

Around the time of the flood, a mining company was operating in the Harless Creek watershed above Appellees' homes. Appellees filed suit against the mining company alleging the mining company's failure to undertake proper reclamation above and around the Harless Creek community contributed to the flooding and resulting damage. *Adkins Plaintiffs v. Stapleton*, No. 2015-CA-001248-MR, 2017 WL 2332686, at \*1 (Ky. App. May 26, 2017). The complaint was later amended to add the individual mining inspectors as defendants. *Id.* at \*2.

On May 31, 2012, after resolving their claims against the mining company, Appellees filed suit in circuit court against the Cabinet seeking monetary damages and a writ of mandamus. They alleged the Cabinet's failure to enforce applicable mining laws at a nearby surface mine contributed to, and played a substantial role in, causing the property damage they suffered in the 2010 flood. After mediation, the parties reached an agreement regarding the mandamus action.

The Cabinet then moved to dismiss the damages claim. One ground for the Cabinet's motion was governmental immunity. The circuit court denied the motion and the Cabinet appealed.

By opinion rendered October 4, 2013, this Court reversed the circuit court, finding the Cabinet was engaged in a governmental function, entitling it to governmental immunity. *Dep't of Nat. Resources, Kentucky Energy & Env'tl. Cabinet v. Adkins*, No. 2012-CA-001310-MR, 2013 WL 5524138, at \*1 (Ky. App. Oct. 4, 2013). By order entered December 17, 2013, the circuit court dismissed Appellees' complaint, as directed by this Court.

On March 14 and 17, 2014, Appellees filed negligence claims against the Cabinet in the Board of Claims.<sup>3</sup> The Cabinet moved to dismiss the claims, arguing the Appellees failed to file their claims within the one-year limit set by KRS 44.110. The Board referred the motion to a hearing officer. Citing KRS 413.270 and persuaded by Appellees' interpretation of *Nelson County Bd. of Educ. v. Forte*, 337 S.W.3d 617 (Ky. 2011), the hearing officer recommended denying the Cabinet's motion because Appellees filed their claims with the Board within ninety days of the circuit court's dismissal. The hearing officer explained:

The Respondent Cabinet's argument that the [Appellees] did not comply with KRS 44.110 statute of limitations in filing with Pike Circuit Court is somewhat bizarre –

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<sup>3</sup> The Board consolidated the claims, styled *Damron, et al. v. Dep't of Nat. Resources*, Kentucky Board of Claims Nos. BC-14-0191 through BC-14-0268.

statutes of limitations in the Board of Claims Act have no bearing on what takes place in Pike Circuit Court. The [Appellees'] Sur-Reply to [the Cabinet's] Reply stated it best: "It defies logic to impose upon [Appellees] the ability to predict that their action in circuit court would be dismissed, that it would then be filed with this Board, and therefore they should have filed their original action using a statute of limitations of an administrative agency who at that time did not have jurisdiction over this case."

(R. 20-21.)

The Board rejected the recommendation. It reasoned that, for KRS 413.270 to save Appellees' claims, those claims had to be filed in the circuit court within the KRS 44.110 time limit. It further stated:

As the actions in Pike Circuit Court were not filed until May 31, 2012, well beyond one (1) year from the time the claim for relief accrued, which as claimed was on July 17, 2010, the statute asked to be tolled had already expired. . . . To construe that a filing commenced in due time, as provided in KRS 413.270, in any other court beyond any applicable limitations period would permit any potentially time-barred filing to be commenced in circuit court first, regardless of the existence of a jurisdictional question, only to save it from being dismissed for want of timely filing in the Board of Claims.

(R. 26.) The Board found *Forte* of little value and, instead, relied heavily on cases from other jurisdictions.

Appellees appealed to the circuit court. The circuit court, unlike the Board, found *Forte* to be directly on point and dispositive. It criticized the Board for failing to follow *Forte* and for relying on distinguishable and irrelevant cases

from other jurisdictions. Accordingly, the circuit court reversed the Board’s order dismissing and remanded for a hearing on the merits.

The Cabinet appealed.

### **QUESTIONS PRESENTED AND STANDARD OF REVIEW**

This Court is not simply determining whether a limitations statute bars the Appellees’ Board of Claims action. The question is also whether the claims were brought within “the limited situations” of the Commonwealth’s waiver of sovereign and governmental immunity<sup>4</sup> and, therefore, whether governmental immunity itself applies here in favor of the Cabinet. Additionally, the Court is called upon to interpret and apply the savings statute in a first-impression fact pattern. Each is a question of law to be reviewed *de novo*. *University of Louisville v. Rothstein*, 532 S.W.3d 644, 647 (Ky. 2017) (“[W]hether a defendant is entitled to the defense of sovereign or governmental immunity is a question of law . . . reviewed *de novo*.”); *Stone v. DuBarry*, 513 S.W.3d 325, 329 (Ky. 2016) (“Statutory construction is a matter of law which requires *de novo* review by this

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<sup>4</sup> The Board of Claims Act is a limited waiver of both sovereign and governmental immunity. *Greene v. Commonwealth*, 349 S.W.3d 892, 897 (Ky. 2011) (“[T]he Board of Claims Act effected a limited waiver of sovereign immunity . . . .”); *Stratton v. Commonwealth*, 182 S.W.3d 516, 519 (Ky. 2006) (“The Board of Claims Act offers a limited waiver of governmental immunity . . . .”). The applicable immunity in this case is governmental immunity. “[G]overnmental immunity’ is the public policy, derived from the traditional doctrine of sovereign immunity, that limits imposition of tort liability on a government agency.” *Yanero v. Davis*, 65 S.W.3d 510, 519 (Ky. 2001) (citation omitted). Although the two forms are not entirely the same, jurisprudential principles established as to one form have been equally applicable to the other. Hence, references to both in this opinion are inevitable.

Court.”); *Hill v. State Farm Ins. Co.*, 390 S.W.3d 153, 155 (Ky. App. 2012) (“Whether an action is barred by the statute of limitations is a question of law[.]” (citation omitted)).

### **ANALYSIS**

The Cabinet argues the circuit court’s order must be vacated because:

(1) Appellees’ claims were not timely filed with the Board of Claims within the applicable one-year limitations period (KRS 44.110); and (2) Kentucky’s “savings statute” (KRS 413.270) cannot “save” the Appellees’ claims because they were not “commenced in due time[.]”

We do not agree with the Cabinet that Appellees’ claims were required to be filed *with the Board of Claims* within one year. However, we do agree the legislature’s limited waiver of immunity embodied in KRS 44.110 requires claims against the state to be filed within one year from accrual, regardless of the forum chosen. If the claim is filed in the wrong forum but in due time to claim the limited waiver of immunity contained in the Board of Claims Act, the period of waiver is suspended in accordance with KRS 413.270. Conversely, a claim filed in any forum against the Commonwealth or its agencies claiming immunity more than a year after the claim accrues falls outside the limited waiver of immunity, is untimely under KRS 44.110, and must be dismissed.



Fuller explanation of these conclusions calls for a closer look at the immunity waiver of the Board of Claims Act, the savings statute, and how the Kentucky Supreme Court case of *Forte* fits in the context of our analysis.

Generally speaking, the waiver of governmental immunity is “a matter of grace[;] such a remedy may be granted, withdrawn or restricted at the will of the legislature.” *Rothstein*, 532 S.W.3d at 650 (quoting *University of Louisville v. Martin*, 574 S.W.2d 676, 679 (Ky. App. 1978) (citing *University of Kentucky v. Guynn*, 372 S.W.2d 414 (Ky. 1963))). The legislature granted a specific waiver of sovereign and governmental immunity by enacting the Board of Claims Act, KRS 44.070, *et seq.*<sup>5</sup> However, as was its prerogative, the legislature limited the scope of that waiver. The legislation “waives the sovereign immunity defense *only in the limited situations as herein set forth.*”<sup>6</sup> KRS 44.072 (emphasis added); *Commonwealth Transp. Cabinet Dep’t of Highways v. Abner*, 810 S.W.2d 504,

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<sup>5</sup> See, *supra*, footnote 4.

<sup>6</sup> The statute continues, as follows:

It is further the intention of the General Assembly to otherwise *expressly preserve the sovereign immunity* of the Commonwealth, any of its cabinets, departments, bureaus or agencies or any of its officers, agents or employees while acting in the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus or agencies in all other situations *except where sovereign immunity is specifically and expressly waived as set forth by statute.*

KRS 44.072 (emphasis added).

505 (Ky. 1991) (“The creation of the Board of Claims by the General Assembly was only a limited waiver of sovereign immunity.”).

The most obvious restriction on this waiver is the damages cap:

[A] single claim for the recovery of money or a single award of money shall not exceed two hundred thousand dollars (\$200,000), exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed three hundred fifty thousand dollars (\$350,000), to be equitably divided among the claimants, but in no case may any claimant individually receive more than two hundred thousand dollars (\$200,000).

KRS 44.070(5). Other limits on the waiver of immunity are found in the repose provisions of KRS 44.110.

KRS 44.110 does not operate as a limitations statute; it is more in the nature of a statute of repose. That is, for claims dependent upon the waiver of immunity, KRS 44.110 establishes a right of repose in favor of state agencies such that after one year from a claim’s accrual the waiver of immunity expires. A simple reading of KRS 44.110 demonstrates that it “is both a statute of limitation and repose because, by limiting the time for taking action, it may extinguish a cause of action before it arises.” *Johnson v. Gans Furniture Industries, Inc.*, 114 S.W.3d 850, 854 (Ky. 2003).

Before focusing on the specifics of the statute, we note that prior to enactment of the Board of Claims Act there was no window of time at all within

which the state could be sued given the circumstances of cases such as this. KRS 44.110 provides that window – a waiver window – that lasts one year.

Simultaneously, the statute expands that waiver window from nothing to one year while also effectively constricting every Kentucky limitations period to one year when the defendant is the Commonwealth or an otherwise immune government agency.<sup>7</sup> KRS 44.110(1); *see Abner*, 810 S.W.2d at 505 (“K.R.S. 44.110(1) specifically states that a claim must be filed within one year and it disallows any extension beyond that year.”).

The second subsection of KRS 44.110 establishes the accrual date for every property damage claim, like the Appellees’ claims, as the date of the negligent act. KRS 44.110(2). Demonstrating a clear intention that KRS 44.110 operate as a statute of repose with the potential for extinguishing claims before they accrue, the statute terminates the discovery rule for personal injury claims after “two (2) years from the date on which the alleged negligent act or omission actually occurred.” KRS 44.110(3). Again, operating as a repose statute for medical malpractice actions, it terminates the discovery rule after “three (3) years from the date on which the alleged negligent act or omission of malpractice actually occurred.” KRS 44.110(4). And it makes inapplicable the statute that

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<sup>7</sup> The statutes of limitation relative to claims against non-immune government entities are unaffected. *Hammers v. Plunk*, 374 S.W.3d 324, 330 (Ky. App. 2011). Incidentally, both claimants in *Hammers* filed timely actions before the Board of Claims. *Id.* at 327-28.

otherwise would suspend the running of the one-year waiver period when “the claimant is an infant or of unsound mind or under any other legal disability to file suit . . . notwithstanding KRS 413.170 . . . .” KRS 44.110(5). Each of these is a repose provision.

The statute does not define how long a claim is viable. The significance of KRS 44.110(1) is in defining how long the limited waiver of immunity will last. By the grace of the legislature in enacting KRS 44.110(1) and (2), the waiver begins on the day the Commonwealth’s negligence causes property damage and lasts one year during which the government lets down its immunity defense. One lays claim to that legislative grace and the waiver by filing an action against the government and depriving it of the repose it would have enjoyed had the claimant not asserted a claim in due time. That brings us to consider the savings statute.

The savings statute says in its entirety:

- (1) *If an action is commenced in due time* and in good faith in any court of this state and the defendants or any of them make defense, and it is adjudged that the court has no jurisdiction of the action, the plaintiff or his representative may, within ninety (90) days from the time of that judgment, commence a new action in the proper court. The time between the commencement of the first and last action shall not be counted in applying any statute of limitation.
- (2) As used in this section, “court” means all courts, commissions, and boards which are judicial or quasi-

judicial tribunals authorized by the Constitution or statutes of the Commonwealth of Kentucky or of the United States of America.

KRS 413.270 (emphasis added).

The parties hereto agree that this case turns primarily on what is meant by the savings statute's qualifier, "*If an action is commenced in due time*[".]"

They are correct.

This Court understands the phrase to mean the savings statute applies only "[i]f an action is commenced in due time" to satisfy the limited conditions of the sovereign's waiver of immunity. Reiterating, the legislature created a one-year waiver window during which the state let down its guard of sovereignty; when that one year ends, sovereign and governmental immunities again apply. That is, after one year the government is entitled again to assert its immunity defense. "[D]ue time" therefore means the period of immunity defined in KRS 44.110.

We are not persuaded by Appellees' argument to the contrary. They assert their claims need only have been filed in the circuit court within the limitations period applicable to such causes of action in circuit court. Because their claim is for damage to property, real and personal, they have five years within which to file their circuit court action. *See* KRS 413.120 (five years limitation period for an "action for trespass on real or personal property"). Therefore, so

goes their argument, the claim was filed within those five years and was commenced “in due time.”<sup>8</sup>

Appellees’ interpretation would lead to an absurd result that, more importantly, is incongruous with Kentucky jurisprudence requiring a reviewing court to find governmental immunity unless “the legislature has explicitly evidenced an intent to waive this immunity.” *Rothstein*, 532 S.W.3d at 647. That different interpretation urged by the Appellees makes no sense because it would eviscerate the repose effect intended by KRS 44.110. None of those repose provisions would apply. Lengthier timeframes than the one-year immunity waiver of KRS 44.110(1) would prevail, not only measured by Chapter 413 statutes allowing claims to be brought in circuit court years after they accrue, but extended even further by the discovery rule in personal injury and medical malpractice cases without the truncation required by KRS 44.110(3) and (4). The KRS 44.110(5) abrogation of KRS 413.170 would be a nullity.<sup>9</sup>

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<sup>8</sup> In support of their position, the Appellees cite this Court’s unpublished opinion in *Mercer Co. Fiscal Court v. Dean*, No. 2009-CA-001933-MR, 2012 WL 28789, at \*1 (Ky. App. Jan. 6, 2012). In *Dean*, the plaintiff filed suit in 2008 against a county and government official related to a 2006 motorcycle accident. This Court found both the county and the official immune from suit but, citing *Forte*, noted the plaintiff was not without a remedy because the “savings statute [would] operate to allow the timely filing of their claims within the Board of Claims after the dismissal of the present action by the circuit court.”

<sup>9</sup> A hypothetical under this alternate meaning of “due time” demonstrates its absurdity. A five-year-old child injured by the negligence of a state employee driving a state agency vehicle would not be required to bring an action in his own behalf for thirteen years because of KRS 413.170. Once he reaches the age of majority, he could wait another nearly two years to pursue a claim against the agency under the Motor Vehicle Reparations Act, KRS 304.39-230(6). If this is what

If we interpreted KRS 413.270 as Appellees argue, as contradicting the repose-statute nature of KRS 44.110(1), we would be expanding the immunity waiver by implication despite our awareness that provisions of “the Board of Claims Act inveigh at length against the principle of implied waiver . . . .” *Kentucky Center for the Arts Corp. v. Berns*, 801 S.W.2d 327, 332 (Ky. 1990). Such an interpretation would violate the rule that “[s]tatutes in derogation of the state’s sovereign immunity will be strictly construed in favor of the state unless the intention of the legislature to do otherwise is clearly expressed in the statute.” *Jones v. Cross*, 260 S.W.3d 343, 345 (Ky. 2008). We will not assume, because we cannot assume, that KRS 413.270 constitutes an implied waiver of sovereign immunity. *Bd. of Trustees of Kentucky Retirement Systems v. Commonwealth, Bd. of Claims*, 251 S.W.3d 334, 340 (Ky. App. 2008).

The foregoing can be summarized by using the words of the Supreme Court: “K.R.S. 44.110 is part of the grant of the right to sue the Commonwealth and establishes a condition precedent to bringing an action and it must be complied with or the action is barred by sovereign immunity. K.R.S. 44.110(1) specifically states that a claim must be filed within one year and it disallows any extension beyond that year.” *Abner*, 810 S.W.2d at 504-05. This interpretation of KRS

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is meant by “in due time” under KRS 413.270, then when the circuit court finds the agency is immune, a claim could be brought before the Board of Claims some sixteen years after the legislature intended repose for the agency under KRS 44.110(1) and (5).

44.110 does not require the claim be filed in the Board of Claims, but only that it be filed within one year. That legislative grace waives immunity. KRS 413.270 requires that the claim be filed in good faith. That legislative grace forgives the error of selecting the wrong forum to claim the waiver of immunity. The claimant in *Forte* availed himself of both acts of legislative grace.

The Supreme Court opinion in *Forte* has nearly dominated this case. For this Court, *Forte* provides an example of how the interplay between KRS 44.110 and KRS 413.270 is supposed to work. Only *Forte*'s relevant facts are necessary to understand this interplay.

In *Forte*, a school teacher was killed when a wind-blown, unsecured school ground pole gate struck her in the head. *Forte*, 337 S.W.3d at 620. The date was May 19, 2006. *Nelson County Bd. of Educ. v. Forte*, No. 2008-CA-001958, p. 2 (Ky. App. Oct. 9, 2009). Significantly, in less than one year, on May 16, 2007, her husband filed a wrongful death claim in circuit court against, among others, the Nelson County Board of Education. *Id.* On August 7, 2009, the circuit court dismissed the case against the board of education on immunity grounds.

*Forte*, 337 S.W.3d at 620. Applying the savings statute, the Supreme Court said:

Where does that leave Mr. Forte going forward? . . .  
Once all matters are final in the direct appeal of the tort action, under KRS 403.270(1), Mr. Forte has 90 days to bring his claim in the proper forum.



*Id.* at 623. Mr. Forte filed his claim in circuit court within the one-year waiver window of KRS 44.110(1). His “action [wa]s commenced in due time” to satisfy the limited conditions of the sovereign’s waiver of immunity under KRS 44.110. Therefore, KRS 413.270 applied, giving him 90 days to pursue his action in the Board of Claims after the circuit court determined the board of education was entitled to claim governmental immunity.

Much of *Forte* focuses on best practices and jurisdiction. The Court concluded that “the soundest course is to commence the action in circuit court. . . . Settling jurisdictional questions in the circuit court [*i.e.*, whether a party is immune] first complies with the constitutional mandate, and the purpose of the Board of Claims Act to address only those claims that are otherwise barred by immunity.” *Forte*, 337 S.W.3d at 622. The Appellees in the case now under review took the “soundest course” to determining the jurisdictional question by filing first with the circuit court. However, that does not mean the claim was filed in due time to subsequently claim the waiver of immunity. Furthermore, to the extent KRS 413.270 is treated as conferring or extending or preserving jurisdiction, the following principle still applies: “The immunity of the state from liability for the torts of its agents is based . . . upon the broad ground of public policy, and it is not waived by a statute conferring jurisdiction only.” *Commonwealth v. Masden*, 295 Ky. 861, 175 S.W.2d 1004, 1007 (1943) (citation and internal quotation marks

omitted). We do, in fact, treat KRS 413.270 as a statute conferring jurisdiction only. *Dollar General Stores, Ltd. v. Smith*, 237 S.W.3d 162, 164 (Ky. 2007) (“the statutory language [of KRS 413.270] speaks to jurisdiction”). Thus, it cannot be interpreted as waiving immunity.

In this case, the Appellees’ claims accrued on July 17, 2010. One year later, on July 17, 2011, the applicable waiver of immunity ended. However, Appellees did not assert their claim against the Cabinet until May 31, 2012. By then, the limited waiver of immunity expired, and the Cabinet was again cloaked with immunity. This was the finding of the Board of Claims. We agree. The Appellees’ action was not commenced in due time to claim the limited waiver of immunity contained in the Board of Claims Act.

We reverse the Pike Circuit Court’s July 20, 2016 judgment and reinstate the Board of Claim’s final order dismissing the Appellees’ claims.

ALL CONCUR.

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