

RENDERED: MARCH 29, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000248-MR

HEIDI WEATHERLY, D/B/A  
TARTAN MEDICAL SERVICES  
AND ALLIANCE HOME CARE, LTD.

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DAVID A. TAPP, JUDGE  
ACTION NO. 12-CI-00833

HOSPICE OF LAKE CUMBERLAND,  
INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND GOODWINE, JUDGES.

CLAYTON, CHIEF JUDGE: Heidi Weatherly d/b/a Tartan Medical Services and Alliance Home Care, Ltd. (“Tartan”) appeals from a Pulaski Circuit Court order dismissing with prejudice its claim for conversion against Hospice of Lake Cumberland Inc. (“Hospice”) on statute of limitations grounds and denying its

motion to file an amended complaint. At issue is whether the trial court correctly ruled the two-year statute of limitations under Kentucky Revised Statutes (KRS) 413.125, rather than the five-year statute of limitations of KRS 413.120(4), applies to Tartan's claim.

On June 29, 2006, Tartan entered into a contract with Hospice to provide in-home medical equipment, respiratory therapy equipment and related services to Hospice patients. Ten months later, Hospice notified Tartan it would not be renewing their agreement at the end of the contract period, June 30, 2007. A dispute then arose about the removal of Tartan's medical equipment from the homes of Hospice patients. Hospice proposed a transition plan to remove Tartan equipment on June 26, 2007, and to replace it with equipment from Hospice's new provider. For equipment which could not be removed on that date, Hospice offered to pay for the use of the equipment for the four days remaining until the end of the contract term.

Tartan rejected the proposal and proposed an alternative transition period of sixty days. Hospice did not accept this arrangement and encouraged Tartan to pick up its equipment over the four days preceding the expiry of the contract.

Tartan did not pick up the equipment and alleged that Hospice was in breach of their contract for removing medical equipment from patients' homes

before the expiry of the contract on June 30, 2007. The record shows repeated requests from Hospice to Tartan to remove the equipment from patients' homes. At some point between late June 2007 and August 2007, Hospice removed Tartan's equipment from the patients' homes. Hospice stored the equipment and ultimately sold it.

Tartan filed a complaint against Hospice on June 29, 2012, alleging Hospice converted and retained equipment valued at \$7,000 to \$8,000. Hospice filed an answer asserting the statute of limitations as a defense, and a counterclaim seeking compensatory damages for the storage of the equipment. On November 6, 2017, following a lengthy period of discovery, Tartan filed a motion for summary judgment on the claim of conversion of durable medical equipment. Hospice responded that the statute of limitations barred the claim and that the equipment had been abandoned. The circuit court entered an order holding that the two-year limitations period of KRS 413.125 was applicable to the conversion claim and consequently dismissed the claim with prejudice. It also denied Tartan's motion to file a first amended complaint to include claims for unjust enrichment and detrimental reliance on the grounds that both the claims were known and available to Tartan at the time the original complaint was filed, and no justification had been provided for the ten-year delay in bringing the claims. The trial court subsequently

denied Tartan's motion to alter, amend or vacate the order. This appeal by Tartan followed.

Tartan argues that the circuit court erred in applying the two-year limitations period of KRS 413.125 to bar its conversion claim and contends the correct statute of limitations is five years under KRS 413.120(4).

KRS 413.125 provides “[a]n action for the taking, detaining or injuring of personal property, including an action for specific recovery shall be commenced within two (2) years from the time the cause of action accrued.” KRS 413.125.

KRS 413.120 provides in part “[a]n action for trespass on real or personal property” . . . shall be commenced within five (5) years after the cause of action accrued[.]” KRS 413.120(4).

KRS 413.125 is a statute of more recent enactment than KRS 413.120. Before July 15, 1988, the language “[a]n action for the taking, detaining or injuring of personal property, including an action for specific recovery[.]” was included in subparagraph (6) of KRS 413.120. *See Madison Capital Co., LLC v. S & S Salvage, LLC*, 507 F. Appx 528, 533 (6th Cir. 2012). In 1988, subparagraph 6 was deleted from KRS 413.120 and the legislature enacted KRS 413.125 which now contains the identical language. *Id.*

As with any statute, when we interpret a statute of limitations “[o]ur main objective is to construe the statute in accordance with its plain language and in order to effectuate the legislative intent.” *Cromwell Louisville Associates v. Commonwealth of Kentucky*, 323 S.W.3d 1, 4 (Ky. 2010) (quoting *Cabinet for Families and Children v. Cummings*, 163 S.W.3d 425, 430 (Ky. 2005)).

The main distinction between conversion, the claim alleged by Tartan, and trespass on personal property or trespass to chattel “is the extent of the defendant’s intermeddling with the property of the plaintiff, and the seriousness of the deprivation and damage caused.” Conversion is defined as “an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” David J. Leibson, 13 *Ky. Practice: Tort Law*, The Nature of Conversion, § 8.1 (2018 ed.) (quoting Restatement (Second) of Torts § 222A(1)). Trespass to chattels involves relatively minor damages or deprivation, while conversion involves consequences which justify the right of the plaintiff to recover the full value of the personal property affected.” David J. Leibson, 13 *Ky. Practice: Tort Law*, The Nature of Trespass to Chattels § 7.1 (2018 ed.).

It is difficult to see how Tartan’s claim of conversion against Hospice could be characterized as a trespass to property falling within KRS 413.120(4).

Tartan nonetheless argues that under *Ingram Trucking, Inc. v. Allen*, 372 S.W.3d 870 (Ky. App. 2012), KRS 413.120(4) applies to all intentional torts against property, including conversion, whereas KRS 413.125 applies only to actions alleging negligent torts against property. Tartan further argues that because neither statute of limitations refers expressly to conversion, KRS 413.120(4) should apply, because in situations in which two statutes are arguably applicable, the longer period of limitations should prevail because statutes of limitation are in derogation of a presumptively valid claim.” *Troxell v. Trammell*, 730 S.W.2d 525, 528 (Ky. 1987).

We address first the applicability of *Ingram* to this case. In *Ingram*, a pickup truck ran a red light and hit a tractor trailer causing property damage in excess of \$11,000. 372 S.W.3d at 871. More than two years after the accident, the trucking company sought damages from the insurer of the driver of the pickup truck. *Id.* The trial court granted summary judgment to the driver on the grounds the claim was barred by the two-year limitations period of KRS 413.125. *Id.* The trucking company appealed, arguing there was a conflict between KRS 413.125 and KRS 413.120(4) because a trespass to chattels involves the detaining or injuring of personal property and that under these circumstances, the lengthier statute should prevail. *Id.* at 372; *see also Troxell, supra*. The Court of Appeals disagreed and affirmed the trial court because trespass to chattel, or trespass to

personal property, is an intentional tort and there was no claim or evidence that the pickup driver intended to damage the tractor trailer. *Id.* at 873. Consequently, the longer period did not apply because the driver was not acting intentionally and therefore did not commit a trespass to chattels when he struck the truck. *Id.*

Tartan claims that *Ingram* stands for the proposition that the two-year limitations period of KRS 413.125 applies solely to actions for negligent damage to property, whereas conversion is an intentional tort and must be governed exclusively by KRS 413.120(4). Tartan's interpretation of *Ingram* is overly expansive. A panel of this Court recently addressed the scope of *Ingram* in the following footnote to an unpublished opinion; we find its reasoning persuasive:

[A]t issue in *Ingram* was property damage caused by a negligent act; therefore, the Court addressed only the appropriate statute of limitations as between negligent damage to property and trespass to chattel, which the appellant alleged was the proper cause of action and thus, the appropriate statute of limitations to be applied. . . . This is not to say, however, that KRS 413.125 exclusively covers negligent damage to property and KRS 413.120(4) exclusively covers intentional property torts. Claims for conversion, also an intentional tort, are governed by the two-year state of limitations under KRS 413.125. *See Madison Capital Co., LLC v. S & S Salvage, LLC*, 794 F.Supp.2d 735, 741 (W.D. Ky. 2011) ('The Kentucky legislature amended KRS § 413.120 . . . and specifically removed from its reach actions involving the taking, detaining, and injuring of personal property (actions for conversion). . . . [T]he legislature left actions for trespass to personal property subject to . . . KRS § 413.120.').

*Stanley v. Knuckles*, No. 2016-CA-001290-MR, 2017 WL 6398296, at \*4 n. 4 (Ky. App. Dec. 15, 2017), *review denied* (Apr. 18, 2018).

Tartan argues that the *Stanley* Court violated the Erie Doctrine in relying on *Madison Capital*, a published federal district court opinion which was later affirmed in an unpublished case opinion of the Sixth Circuit Court of Appeals. *See Madison Capital Co., LLC v. S & S Salvage, LLC*, 507 F. App'x 528 (6th Cir. 2012). The interpretation of state law by federal courts is not binding on state courts. The United States Supreme Court has stated: "Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State." *Johnson v. Fankell*, 520 U.S. 911, 916, 117 S. Ct. 1800, 1804, 138 L. Ed. 2d 108 (1997). On the other hand, the interpretation of state law by a federal court need not be disregarded and may certainly be viewed as persuasive. *U.S., ex rel. U.S. Attorneys ex rel. Eastern, Western Districts of Kentucky v. Kentucky Bar Ass'n*, 439 S.W.3d 136, 147 (Ky. 2014). The determination in *Madison* that conversion claims are governed by KRS 413.125 is well-reasoned and we have no reason to disregard it.

The opinion of the Sixth Circuit does observe that this interpretation leads to the illogicality of applying a two-year statute of limitations to conversion claims but a five-year statute to trespass to chattels, a tort of lesser culpability.

*Madison*, 507 Fed. App'x at 540. This comment by the Court was made in the context of the facts of that case which involved a plaintiff attempting to characterize what was clearly a conversion claim as a trespass to chattels in order to invoke the longer statute of limitations. *Id.* at 539-40. A similar observation is found in the Kentucky Practice Series discussion of the tort of trespass to chattel which states: "Clearly, KRS 413.125 applies to a conversion since there is no specific language of conversion in KRS 413.120(4). It would be illogical to apply a two-year statute of limitation to conversion, but a five-year statute to trespass to chattels, a tort of lesser culpability." David J. Leibson, 13 *Ky. Practice: Tort Law*, The Nature of Trespass to Chattels, § 7.1 (2018 ed.).

The observed illogicality does not render the statutes incompatible, however, and we agree with the trial court's comment in its order denying Tartan's motion to alter, amend or vacate that resolving this type of statutory nuance is better left to resolution by the legislature.

For the foregoing reasons, the order granting summary judgment to Tartan on the claim of conversion against Hospice and denying Tartan's motion to amend complaint is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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