



Kansas Courts News Release

Office of Judicial Administration

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*Judge
Kim R. Schroeder*



*Judge
G. Gordon Atcheson*



*Judge
Michael Buser*

Kansas Court of Appeals to hear oral arguments at Washburn University in Topeka

TOPEKA—A three-judge panel of the Kansas Court of Appeals will hear oral arguments Tuesday, April 16, in the Robinson Courtroom at Washburn University School of Law.

The law school building on the Washburn University campus is at 17th and MacVicar in Topeka.

Judges Kim R. Schroeder, G. Gordon Atcheson, and Michael Buser will hear oral arguments in three cases starting at 9:30 a.m. and an additional two cases starting at 1:30 p.m.

After the sessions, the judges will be available to answer questions from the public about the court and court procedures.

Schroeder, the presiding judge for the panel, said the hearings are an educational opportunity.

"As a court, we always look forward to going to one of the law schools," he said. "I hope the students will find the cases interesting and the arguments by the lawyers beneficial to watch. We have a good slate of cases with some time-relevant issues for the students to observe. I hope it will be a good learning lesson for those students able to attend oral arguments and review briefs."

Schroeder also said he enjoys returning to his alma mater.

"I really enjoy hearing cases at Washburn since I graduated from there. It is fun to return and see what is presently happening on the campus," he said.

Oral Arguments

Attorneys for each side will have an opportunity to present arguments to the judges, and the judges will have a chance to ask questions. The court will then take each case under consideration and will issue a written decision at a later date, usually within 60 days.

There are 14 judges on the Court of Appeals, and they sit in panels of three to decide cases. In addition to the panel hearing cases this week in Topeka, other panels will hear cases at Johnson County Community College in Overland Park and at the U.S. Courthouse, Wichita. All hearings are open to the public.

In fiscal year 2018, the Court of Appeals resolved appeals in 1,740 cases, including 1,280 in which the court issued a formal written opinion.

The five cases to be heard at Washburn are summarized below. They originate from Douglas, Miami, Pottawatomie, and Shawnee counties.

9:30 a.m. ♦ Tuesday, April 16, 2019

Appeal No. 119,721: *State of Kansas v. Christopher M. Payton*

Pottawatomie County: A law enforcement officer stopped Payton's vehicle. After Payton left the scene, the officer led his drug dog around the vehicle to sniff for narcotics. The officer believed the dog alerted to the presence of narcotics in the trunk and rear passenger door areas. Upon searching the vehicle, the officer found methamphetamine, drug paraphernalia, OxyContin, and Alprazolam. Payton filed a motion to suppress the evidence, arguing the officer did not have probable cause to search the vehicle because the dog did not give a reliable alert. The officer testified the dog's change in behavior—which is only recognizable to him as he is the dog's only handler—constituted a reliable alert. The district court suppressed the evidence. On appeal, the State argues there was sufficient evidence to support a reliable alert and that the court erred in excluding the evidence.

Appeal No. 119,208: *CoreFirst Bank & Trust v. Timothy Degginger, et al.*

Shawnee County: Degginger executed a mortgage and a promissory note with the bank. He defaulted on the note, and the bank sought to foreclose. In lengthy litigation in Shawnee County District Court, Degginger challenged the bank's ability to enforce the mortgage. The district court ultimately granted summary judgment in favor of the bank on its foreclosure petition and on Degginger's counterclaims for fraud and awarded the bank attorney fees. Degginger appeals the court's summary judgment rulings and award of attorney fees.

Appeal No. 120,015: *Teresa Wilke, v. Ronald Ash*

Douglas County: Wilke suffered a compound, open fracture near her ankle when Ash's 100-pound dog struck her from behind at a dog park in Douglas County. Wilke sued, alleging Ash was negligent because he knew the breed of his dog had herding tendencies, and he failed to train his dog to stop on command. The district court granted summary judgment against Wilke because she agreed she had no facts showing Ash's dog was vicious. On appeal, Wilke argues the district court erred as a matter of law because viciousness is not a necessary element of her negligence claims against Ash.

1:30 p.m. ♦ Tuesday, April 16, 2019

Appeal No. 119,489: *In the Matter of the Marriage of Jaime L. Whildin and Thomas M. Whildin*

Miami County: The main issues in this case involve the enforceability of contractual provisions in the parties' separation agreement. At the time of their divorce, the parties had trouble calculating the father's income from his self-employment as an electrician when determining the parties' child support obligations. To prevent future disputes of his income, the parties stipulated in their separation agreement that: 1) the father would maintain proper business records and employ a certified public accountant; and 2) his annual income would be calculated at a minimum of \$75,000 when considering child support modifications. When he moved to modify child support, a hearing officer and the district court found both of these provisions were unenforceable. The mother appeals.

Appeal No 118,837: *State of Kansas v. Hanbit J. Chang*

Douglas County: A jury convicted Chang of sexual battery following a dorm party at the University of Kansas. Immediately before trial, the district court excluded evidence of text and social media messages between Chang and the victim. The texts allegedly contained discussion of sexual activity, and Chang asserts these were relevant to the victim's consent. Chang raises four issues on appeal: 1) the district court erred in excluding the text messages because this denied him the ability to present his chosen theory of defense: the victim implied nonverbal consent then withdrew her consent; 2) the district court erred in limiting his cross-examination of the victim using the texts for impeachment; 3) the prosecutor committed error during closing arguments; and 4) these errors amount to cumulative error.

Note: Reporters who want to cover the oral arguments should become familiar with [Supreme](#)

[Court Rule 1001: Media Coverage of Judicial Proceedings](#). To request permission to use video, photo, or audio recording devices during the proceedings, the reporter must submit his or her request to Lisa Taylor at taylorl@kscourts.org, no later than noon Monday, April 15.

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