



Kansas Courts News Release

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Johnson County
District Judge Neil Foth



Chief Judge J. Richard Foth,
Kansas Court of Appeals, 1978-1985

District judge follows father's footsteps, serves on Court of Appeals panel

TOPEKA—On June 11, District Judge Neil Foth will take his seat in the Court of Appeals courtroom, wearing the same robe and hearing cases from behind the same bench as his father

did more than three decades ago.

Foth is a district judge in the 10th Judicial District, which is composed of Johnson County. His father, J. Richard Foth, was among the first judges appointed in 1977 to the newly reestablished Court of Appeals, and he went on to serve as chief judge from 1978 until his death in 1985.

Chief Judge Karen Arnold-Burger of the Court of Appeals appointed Foth to sit on a three-judge panel to hear six appeals.

"This is a unique circumstance," Foth said. "I attended the inaugural ceremonies for the new Court of Appeals, in the new Judicial Center, as a high school senior in 1977. I still wear my dad's robe from that time, so it will return to the courtroom it once presided over."

Foth followed in his father's footsteps, earning a law degree and eventually being named a judge.

"But I never thought I would follow him this closely," he said.

Arnold-Burger said the Court of Appeals often asks district judges to sit with appellate judges.

"It is a great learning opportunity for the district judge, and it helps us out when our judges have a conflict or are otherwise unavailable. We are particularly proud to have Judge Foth sit with us this month, since his father was one of the original members of the Court of Appeals. His legacy lives on with the court, and it is an honor to have his son sit with us."

Since becoming a judge in January 2009, Foth has heard family court and child in need of care cases in his Olathe courtroom. He previously worked three years for the Topeka Public Defender's Office and was in private practice for 22 years.

On June 11, he will hear cases with Court of Appeals Judges Stephen Hill and Melissa Taylor Standridge.

"I was very honored when Chief Judge Arnold-Burger asked me to sit with the Court of Appeals, and I hope I can help the court with its heavy dockets. My only goal is to be useful to Judge Hill and Judge Standridge," Foth 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, another panel will hear cases at the U.S. Courthouse, Kansas City, Kansas. 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 six cases to be heard on the [June 11 docket](#) at the Kansas Judicial Center are summarized below. They originate from Douglas, Geary, Riley, and Scott counties.

9 a.m. ♦ Tuesday, June 11, 2019

Appeal No. 120,129: *Pantaleon Florez III v. Rick Ginsberg, Sally Roberts, Paul Markham, and the University of Kansas*

Douglas County: Florez filed a lawsuit against the University of Kansas alleging negligence and a violation of the Kansas Consumer Protection Act (KCPA). The claims were based on information posted on the KU website about the requirements necessary to obtain an initial teaching license. The district court granted a motion to dismiss in favor of the defendants after finding the KCPA claim was barred by the statute of limitations. The district court also dismissed Florez' negligence claim because it amounted to educational malpractice, which is not an actionable theory in Kansas. Issues on appeal are whether: 1) Florez' negligence claim should not be considered educational malpractice but as a standalone common law negligence claim; 2) Florez' KCPA claim is not barred by the statute of limitations because he could not have discovered the claim until after he completed his degree; and 3) the district court erred in denying Florez' motion to alter or amend the judgment on the basis that he also presented a "bait and switch" KCPA claim that was not barred by the statute of limitations.

Appeal No. 119,705: *Shannon Creagh, formerly known as Shannon Hoff v. David Hoff*

Riley County: After the Hoff's divorced, an agreement required David to pay \$900 monthly to Shannon. His obligation would end if Shannon cohabitated with an unrelated male in a marital-type relationship. David believed Shannon was living with her fiancé, and he asked to be relieved of his payment obligation. Shannon was engaged, and she and her fiancé had a joint bank account. In addition, the fiancé listed Shannon's address as his own on forms and on his driver's license. Despite these facts, the district court ruled because Shannon and her fiancé were not physically living together as husband and wife, she was not cohabitating within the definition of Kansas law. David's motion was denied and he appeals.

Appeal No. 120,121: *Lario Oil and Gas Company v. Kansas Corporation Commission*

Scott County: Lario Oil and Gas is the owner and operator of oil-producing wells in Scott County. Lario filed an application with the Kansas Corporation Commission (KCC) for an order authorizing unitization and unit operations pursuant to the Kansas Unitization Act, K.S.A. 55-1301 et seq. Cholla Production LLC, an oil and gas exploration and production company, owned and operated oil- and gas-producing properties both within and adjacent to Lario's proposed unit boundary. Cholla filed a protest to Lario's application, alleging Lario's proposed plan was flawed geologically, was unfair and inequitable, and would substantially and irreparably harm Cholla's correlative rights. Following an evidentiary hearing, the KCC denied Lario's application for unitization on grounds Lario had not met its burden to show its proposed unit constituted a single-pressure system, as required by K.S.A. 55-1302(b). After the KCC denied Lario's petition for reconsideration, Lario filed a petition for review with the district court, which affirmed the KCC's orders. Issues on appeal are whether: 1) the KCC erroneously interpreted or applied the Kansas Unitization Act; 2) the KCC's orders were not supported by substantial competent evidence; and 3) the KCC's orders were unreasonable, arbitrary, or capricious.

1:30 p.m. ♦ Tuesday, June 11, 2019

Appeal No. 118,852: *State of Kansas v. James M. Fletcher*

Douglas County: Fletcher was convicted of five counts of aggravated indecent liberties with a child under age 14 for molesting his former stepdaughter from the time when she was 11 to 13 years old. He appeals his convictions and contends one of the State's witnesses—his ex-wife and the child's mother—was unavailable or incompetent as a witness because of a medical or

mental condition that caused her to have issues with her memory. He claims her memory-impaired testimony infected the evidence at his trial. Issue on appeal is whether the district court abused its discretion in failing to declare his ex-wife unavailable as a witness and for failing to grant Fletcher's motion for a mistrial.

Appeal No. 119,847: *State of Kansas v. Lance Flint*

Geary County: After a traffic stop for an improper lane change, a law enforcement officer began asking Flint about his travel plans. After Flint responded, the officer contacted dispatch to request a driver's license, registration, and criminal history check. While waiting, the officer used a detection dog, which resulted in a positive alert for drug odor on Flint's vehicle. Once backup arrived, law enforcement searched the car and discovered 40 pounds of marijuana in the trunk. Flint was arrested and charged with possession of marijuana with intent to distribute and not having a drug tax stamp. He filed a motion to suppress the evidence obtained during the search, arguing the officer did not have reasonable suspicion to suspect he committed a traffic violation. Flint also argued law enforcement extended the scope of the traffic stop by asking travel plan questions before submitting his information to dispatch. The district court denied his motion to suppress, and Flint was convicted in a bench trial on both charges. Issues on appeal are whether the district court erred in denying Flint's motion to suppress based on his argument: 1) the officer did not have reasonable suspicion of an observed traffic violation; and 2) the officer's travel plan questioning unlawfully extended the scope and duration of the traffic stop.

Appeal No. 119,464: *State of Kansas v. Christian D. R. Chardon*

Douglas County: Chardon violated his probation conditions and was ordered to serve 60 days in jail to begin upon the court's order. Chardon had already spent 65 days in jail awaiting disposition of the probation violations in lieu of bond. Issue on appeal is whether the district court should have credited this time toward the 60-day sanction.

Note: Reporters who will cover oral arguments must be 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 5 p.m. Monday, June 10.

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