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Energy and Environment Cabinet, Department for Natural Resources v. Harmon

Court of Appeals of Kentucky - May 10, 2019 - S.W.3d - 2019 WL 2063702

Residents of community who suffered property damage from torrential rainfall and flooding filed action for review of decision by Kentucky Board of Claims, dismissing residents' negligence claims against Energy and Environment Cabinet, Department of Natural Resources, which claims were based on Cabinet's alleged failed to enforce mining laws at nearby surface mine.

The Circuit Court reversed and remanded. Cabinet appealed.

The Court of Appeals held that:

- Negligence claims were barred by governmental immunity, and
- The savings statute does not constitute an implied waiver of sovereign immunity.

One-year period for residents to assert negligence claims against Energy and Environment Cabinet, Department of Natural Resources, accrued on date residents suffered property damage from torrential rainfall and flooding, which was nearly two years before residents asserted claims, and thus claims were barred by governmental immunity, in residents' action seeking review of decision by Kentucky Board of Claims, dismissing their negligence claims against Cabinet.

The savings statute, which allows the commencement of a new action in the proper court within 90 days of a judgment that the court in which the action was filed did not have jurisdiction, does not constitute an implied waiver of sovereign immunity.