

IN THE SUPREME COURT OF MISSOURI

SC NO: 88618

FLOYD WILCUT (Deceased),
And
SHARON WILCUT,
Appellants,

v.

INNOVATIVE WAREHOUSING,
Respondent,

And

AMERICAN MANUFACTURER'S MUTUAL INSURANCE CO.,
Respondent

APPELLANTS' SUBSTITUTE REPLY BRIEF

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JURISDICTIONAL STATEMENT

In the instant workers' compensation action, Sharon Wilcut sought death benefits for the death of her husband, Floyd Wilcut, following a work related accident occurring on 4/13/00. After the accident, Floyd Wilcut was taken to a hospital for treatment. Employee's treatment was complicated by his refusal to accept a blood transfusion, based upon his beliefs as a Jehovah's Witness. He died on 4/20/00 from cardiac ischemia and severe anemia. On 2/9/05, ALJ Knowlan held a hearing on the Claim. Thereafter, on 5/16/05, ALJ Knowlan issued his Award, ruling that employee's 4/13/00 accident was a substantial factor in causing his injuries and subsequent death, and that respondent had failed to satisfy its burden of proof on the issue of unreasonable refusal of medical treatment under Section 287.140.5.

Respondent filed a timely Application for Review with the Industrial Commission. On 6/7/06, the Industrial Commission issued its Final Award Denying Compensation, reversing the Award of ALJ Knowlan. Therein, the Industrial Commission held that employee's refusal to accept life-saving blood transfusions was unreasonable and, thus, broke the medical causal link between the work related accident and employee's death. The Industrial Commission concluded

that employee's death did not arise out of and in the course of his employment, and that respondent was not liable for the payment of death benefits.

On 6/20/06, Sharon Wilcut filed her Notice of Appeal with the Industrial commission.

On 6/19/07, the Missouri Court of Appeals, Eastern District, issued its Opinion. Therein, the Eastern District reversed the Industrial Commission's Award, finding that the Industrial Commission's decision was not supported by competent and substantial evidence, in that it did not adequately accommodate employee's religious beliefs. The Court interpreted the Workers' Compensation Act as requiring that religious beliefs be liberally considered. It found that employee invoked his strong and sincerely held religious beliefs against a blood transfusion. Finding that this refusal was not unreasonable in light of the employee's beliefs, the Court held that claimant was owed death benefits. Judge Romines filed a Dissenting Opinion. Therein, Judge Romines concluded that the majority result violated the First Amendment of the United States Constitution, and Section 5 and 7 of Article I of the Missouri Constitution. Pursuant to Rule 83.03, Judge Romines requested transfer to the Missouri Supreme Court. On 6/19/07, the Supreme Court transferred the instant case from the Court of Appeals.

This Court has jurisdiction to entertain appeals on transfer from the Court of Appeals, pursuant to Article V, Section 3 and Article V, Section 10 of the Missouri

Constitution (1945) (as amended 1982). Therefore, the jurisdiction of this Court is invoked pursuant to Article V, Section 3 and Article V, Section 10 of the Missouri Constitution (1945) (as amended 1982).

STATEMENT OF FACTS

Introduction

Procedural History

On 10/3/01, Sharon Wilcut filed her Claim for Compensation, seeking benefits for the death of her husband, Floyd Wilcut, following a 4/13/00 accident. In its Answer, respondent Innovative Warehousing (hereinafter“respondent”) (L.F.2-3). Matters referred to herein that are contained in the Transcript of Hearing shall be designated as (Tr.__). Matters referred to herein that are contained in the Legal File shall be designated as (L.F. __).

On 2/9/05, ALJ Knowlan held a hearing on the Claim. (Tr. 1-643). At hearing the parties stipulated, *inter alia*, that on 4/13/00, Floyd Wilcut sustained an accident that arose out of and in the course of his employment; that respondent furnished medical aid, in the amount of \$68,785.24; that respondent paid temporary total disability benefits totaling \$35,956.28 for the 107 week period from 4/14/00 to 5/1/02; that respondent paid \$5,000.00 for employee’s funeral expenses; that claimant was making no claim for additional medical expenses or temporary total disability benefits; and that at some point during employee’s treatment following the 4/13/00 accident and prior to employee’s death, employee was offered a blood transfusion, but refused to accept the blood transfusion. (Tr.

6-10). The issues to be resolved at hearing were: 1) whether employee's dependents were entitled to an award for death benefits and, relatedly, medical causation; 2) if claimant was entitled to an award of death benefits, then the employee's dependents would have to be identified, and a determination made as to the distribution of death benefits; and 3) if claimant was not entitled to an award of death benefits, whether respondent would be reimbursed for benefits previously paid. (Tr. 8-9).

On 5/16/05, ALJ Knowlan issued his Award. (L.F. 6-15). Therein, the ALJ found that employee refused to accept blood transfusions based upon his religious beliefs, and that this decision was made with the understanding that refusal to accept a blood transfusion might lead to employee's death. ALJ Knowlan found that the medical evidence supported a conclusion that if employee had accepted a blood transfusion, it is likely that he would have survived. (L.F. 6-15). As the ALJ noted, the issue was whether employee's decision not to accept a blood transfusion constituted an "unreasonable refusal" of medical treatment, within the meaning of Section 287.140.5, that would relieve respondent of responsibility for death benefits. ALJ Knowlan found that the facts in the case were relatively straight forward and, for the purpose of legal analysis, could be simplified. Those facts were that: employee sustained a work related injury on 4/13/00 that caused significant amount of blood loss; employee was a Jehovah's Witness and believed

that if he accepted a blood transfusion, he would be guilty of a gross sin that would preclude him from inheriting everlasting or eternal life; in accordance with his religious beliefs, employee and his family refused a blood transfusion; this refusal was made with the knowledge and understanding that employee's decision might prevent his treating physicians from saving his life; and if employee had accepted a blood transfusion, it was likely that his physicians would have been successful and employee would not have died on 4/20/00. (L.F. 6-15).

ALJ Knowlan found that the 'key fact' was employee's belief, as a Jehovah's Witness, that if he accepted a blood transfusion, he would be condemned to eternal damnation and forfeit eternal life. Given this belief, the ALJ found that employee's decision did not appear to be unreasonable. To the ALJ, the only question was whether, given employee's beliefs as a Jehovah's Witness, his decision was unreasonable. Based on the facts and circumstances underlying employee's decision, the ALJ held that employee's decision not to accept the blood transfusion was not unreasonable and, consequently, the forfeiture provision of Section 287.140.5 was not applicable. Moreover, the ALJ found that since it appeared that employee's decision to refuse a blood transfusion would have been foreseeable, that decision did not qualify as a superceding or intervening event. Based upon these conclusions, ALJ Knowlan ruled that employee's 4/13/00 accident was a substantial factor in causing employee's injuries and subsequent death on 4/20/00. The ALJ

held that respondent failed to satisfy its burden of proof on the issue of unreasonable refusal of medical treatment under Section 287.140.5, and that respondent was liable for death benefits. (L.F. 6-15).

On 6/2/05, respondent filed an Application for Review with the Industrial Commission, appealing ALJ Knowlan's Award. (L.F. 16-17).

On 6/7/06, the Industrial Commission issued its Final Award Denying Compensation, reversing the Award of ALJ Knowlan. (L.F. 18-33). Therein, the Industrial Commission adopted the list of undisputed facts and summary of the evidence made by the ALJ. It found that the evidence overwhelmingly supported a conclusion that employee would have survived his work injuries, if he had accepted a blood transfusion to reverse his anemia. As the Industrial Commission observed, respondent had presented uncontroverted evidence that employee, and then his family on his behalf, consistently refused blood transfusions with the full knowledge that employee would live if he accepted them, and employee would die if he refused them. (L.F. 18-33).

The issue before the Industrial Commission was whether employee's refusal to accept blood transfusions was unreasonable, such that respondent was relieved of liability for the consequences of employee's refusal. As the Industrial Commission observed, the ALJ determined that employee's refusal to accept blood transfusions was reasonable, because a *reasonable Jehovah's Witness* in

employee's situation would have refused blood transfusions. However, the Industrial Commission declined to follow the ALJs reasoning. Rather, it was persuaded by the reasoning of the California Court of Appeals in *Martin v. Industrial Accident Com.*, 304 P2d 828, 830 (Cal. App.1956). The *Martin* Court recognized that a refusal based upon a reasonable religious belief was not per se, a reasonable refusal. Rather, all of the evidence surrounding the refusal must be considered, including the employee's religious beliefs. (L.F. 18-33).

Applying the rationale of *Martin*, the Industrial Commission considered the reasonableness of employee's refusal to accept blood transfusions, in light of all the evidence, including the employee's religious beliefs. It found the following evidence relevant to its determination:

The physical risk of transfusion was minimal compared to the benefit, i.e., an almost certainty that employee would have survived his injuries;

Employee of 53 years old at the time of his death;

The spiritual risk of the transfusion from the perspective of a Jehovah's Witness was the commission of a capital sin, which would hinder prayer and prevent enjoyment of everlasting life; and

Jehovah's Witnesses believe that Jehovah forgives, so if employee had lived, employee may have been able to atone for the sin of accepting the blood transfusion. (L.F. 18-33). Based upon these facts, the Industrial Commission

concluded that employee's refusal to accept the lifesaving blood transfusion was unreasonable and thus, broke the medical causal link between the work accident and employee's death. It held that employee's death did not arise out of and in the course of his employment, and that respondent was not liable for the payment of death benefits. (L.F. 18-35).

The Industrial Commission rejected claimant's argument that Section 287.140.9 'trumped' the provisions of Section 287.140.5 (L.F. 18-33). Section 287.140.9 stated that nothing in the Act shall prevent an employee from being provided treatment for his injuries by prayer or spiritual means, if the respondent does not object to the treatment. The Industrial Commission found that under the plain language of the statute, Section 287.140.9 was not applicable to the facts of the instant case. That statutory provision related solely to prayer or spiritual means, the goal of which was treatment of an employee's injuries. Employee's refusal to receive a blood transfusion was not for the purpose of treating his injuries, it was for the purpose of complying with a religious edict, so that employee could remain free of sin. Finally, the Industrial Commission found that the case before it was not about an individual's freedom to exercise his or her religion. Rather, the case was about who should bear the consequences resultant from the exercise of one's religion. Under the facts, the Industrial Commission found that employee's

dependents must bear the consequences of employee's decision to strictly observe the tenets of his religion. (L.F. 18-33).

On 6/20/06, claimant Sharon Wilcut filed a Notice of Appeal with the Industrial Commission. (L.F. 34-53).

On 6/19/07, the Missouri Court of Appeals, Eastern District issued its Opinion. Therein, the Court reversed the Industrial Commission's Award, finding that the Industrial Commission's decision was not supported by competent and substantial evidence, in that it did not adequately accommodate the employee's religious beliefs. (A.17-A.29). Matters referred to herein that are contained in the Appendix, *supra*, shall be designated as (A.__). As the Opinion noted, whether an employee's refusal of medical treatment was unreasonable is a question of fact. The Court's review of Missouri caselaw revealed no case where the reasonableness of an employee's decision to forego treatment was based upon religious beliefs. Thus, the Court had to determine the meaning of "unreasonable", as used in Section 387.140.5. Further, the Court found that it had to determine to what extent the Legislature intended an employee's religious beliefs to be considered when analyzing whether a refusal of medical treatment was unreasonable. Section 287.140.5 did not state that any refusal of a low risk, but beneficial, treatment would result in a denial of compensation. The refusal also had to be unreasonable

in some sense. However, the statute did not provide any further guidance to determine what the Legislature might consider to be “unreasonable”. (A.17-A.29).

Next, the Court turned to other provisions of the Workers’ Compensation Act to interpret what weight to give to employee’s religious beliefs in assessing the reasonableness of his refusal. Section 287.140.9 provided some guidance. Claimant could not take sanctuary in this Section, alone, in providing the compensability of her claims, because employee and those direction his care chose medical treatment in lieu of the transfusion, including medicines and supplements intended to stimulate blood production. Nevertheless, the Opinion found that the Section showed that the Legislature contemplated the religious beliefs might impact an employee’s decision-making on what treatment to undertake. If Section 287.140.5 was to be read harmoniously and liberally construed, sincerely-held religious beliefs must be considered by the Industrial Commission. Therefore, liberally interpreting the phrase “unreasonable refusal [of]...treatment” in Section 287.140.5, harmoniously with Section 287.140.9 to give effect to the Legislative intent, the Court understood the statute to liberally accommodate an employee’s religious beliefs to the extent that those beliefs influenced his decision to pursue, or not to pursue, a course of medical treatment. (A.17-A29).

The Court found that there was no question that employee’s belief was sincere. Further, the Court found that the Industrial Commission failed to

adequately accommodate employee's religious belief in its decision. While it cited some of employee's beliefs, those beliefs would receive not deference in the Final Award. Instead, the Industrial Commission followed *Martin* and found that employee's decision was a voluntary one, that broke the chain of causation between the accident and his death. The Opinion found the Industrial Commission's reliance on *Martin* to be misplaced. In addition to being a case from outside of Missouri, the Court of Appeals found that *Martin* was expressly overruled in *Montgomery v. Bd. Of Retirement*, 109 Cal.Reporter 181, 185-185 (Cal.App.1973). In *Montgomery*, the California Appellate Court found that the Court's reasoning in *Martin* was not consistent with the United States Supreme Court and California Courts' interpretations of the constitutional right to freely exercise religion, and the Court of Appeals refused to follow *Martin*. (A.17-A.29).

Further, the Opinion found that the Industrial Commission believed that a religious reason, no matter how strongly held, would not be enough to justify compensation under Section 287.140.5. "In determining hat was unreasonable, they relied not only on the question of whether an employee gravely injured in a work-related accident had refused treatment that likely would have benefited him, but also on its conclusion that employee could have asked for atonement of his sins." Thus, the Court held that the Industrial Commission's decision was not supported by competent and substantial evidence. It reasoned that the statutory scheme

dictated that religious beliefs be liberally construed and that employee invoked his strong and sincerely held religious beliefs against the transfusion. This refusal was not unreasonable in light of his beliefs, and claimant was owed death benefits. (A.17-A.29).

Judge Romines dissented. In his Dissenting Opinion, Judge Romines stated that the majority opinion confused the manner of the Court's review and imposed an amorphous standard that was not compelled by the Constitution or statute, and was not consistent with the Court's duty to avoid an analysis of another's religious belief. As Judge Romines noted, the testimony was clear a blood transfusion would have allowed Mr. Wilcut to survive. Employee and his family exercised their religious beliefs freely, and respondent did not seek judicial intervention. Nor did the State seek to compel a transfusion. As such, there was no religious conundrum for the Court to tackle. Judge Romines assumed that the workers' compensation statutes were neutral as to religious precepts. The statutory sections at issue-Section 287.140.5 and Section 287.140.9 were clear. Those statutes were not ambiguous and were reconcilable. Section 287.140.5 required the Industrial Commission to determine if a refusal of medical treatment was unreasonable in view of the seriousness of the injury. As was obvious, the injury here was life threatening. The record left no doubt that the medical opinion was unanimous-a transfusion was compelled. The medical opinion was correct. Further, Judge

Romines found that the record was likewise clear that the Wilcut family and medical staff were in contact with Jehovah's Witness counselors who recommended medical treatment that did not include a transfusion of whole blood. This was the record on which the Industrial Commission reached the factual conclusion that the refusal was unreasonable, within the meaning of Section 287.140.5. (A.17-A.29).

Judge Romines found that the majority compounded its error by making Section 287.140.9 something more than it was. As interpreted by Judge Romines, Section 287.140.9 was to be read as saying "pray if you wish", or "bring in your Pastor, Priest, Practioner, or Shaman". This Section did not justify the Court straying into a discussion of the principles of a Jehovah's Witness. Whatever employee's beliefs were, they were not necessary to a construction by the Industrial Commission as to whether money was to be paid pursuant to Section 287.140. To even engage in this discussion violated clear principles set out by the United States Supreme Court and the Missouri Supreme Court, in both free exercise cases and in establishment cases-that courts were to stay removed from denominational doctrine. To allow a "Jehovah's Witness" exception to Section 287.140.5 would violate the First Amendment to the United States Constitution, as well as the Missouri Constitution. Concluding that the majority result violated the First Amendment of the United States Constitution and Sections 5 and 7 of Article I of

the Missouri Constitution, and was contrary to cases thereunder, Judge Romines requested transfer to the Missouri Supreme Court under Rule 83.03. (A.17-A.29).

On 6/19/07, the Supreme Court granted transfer.

Relevant Facts

The significant facts are essentially undisputed. Mrs. Wilcut is the widow of Floyd Wilcut, the employee. Mrs. Wilcut believed that the employee's decision to reject a blood transfusion was reasonable, based upon his religious beliefs and the existence of blood substitutes that could be used. (Tr. 45-46).

Dr. C.W. Chastain testified on behalf of the appellant, and he stated that the truck accident was a substantial factor in causing the employee's death, and 'but for' the truck accident, the employee would not have died. (Tr. 436-437). Dr. Chastain went on to opine that it would be speculative to prove one way or the other as to whether the employee would have survived the blood transfusion. (Tr. 437). He also stated that the employee's injuries were severe, and he thought that he lost a dangerous amount of blood from the accident. (Tr. 465). Dr. Chastain felt that from a medical standpoint, the employee's refusal to accept a blood transfusion was unreasonable. (Tr. 452).

POINTS RELIED ON

I

THE INDUSTRIAL COMMISSION DID ERR IN RULING THAT EMPLOYEE'S REFUSAL TO ACCEPT A LIFE-SAVING BLOOD TRANSFUSION WAS AN UNREASONABLE REFUSAL OF MEDICAL TREATMENT WITHIN THE MEANING OF SECTION 287.140.5 OF THE WORKERS' COMPENSATION ACT, BARRING EMPLOYEE'S DEPENDENTS FROM RECOVERING DEATH BENEFITS, AND THE COURT OF APPEALS OPINION MUST BE AFFIRMED, FOR THE REASON THAT:

A.

IT IS SPECULATIVE THAT THE EMPLOYEE'S REFUSAL TO ACCEPT BLOOD TRANSFUSION WAS THE CAUSE OF HIS DEATH, AND EVEN IF IT WAS, SECTION 287.140.9 OF THE ACT ALLOWS FOR AN EMPLOYEE TO HAVE PRAYER OR SPIRITUAL MEANS.

B.

THE EMPLOYEE HAD A STATUTORY RIGHT TO IMPOSE THE CONSEQUENCES OF HIS DECISION ON THE EMPLOYER BECAUSE THE EMPLOYER DID NOT OBJECT TO HIS EXERCISING HIS RELIGIOUS BELIEFS; AND THE STATUTE REQUIRES A

“HARMONIZING” OF SECTION 287.140.5 AND SECTION 287.140.9 OF THE ACT, AND THERE IS NO VIOLATION OF THE MISSOURI AND UNITED STATES CONSTITUTION IN SUCH HARMONIZATION.

Penner v. King, 695 S.W.2d 887,889 (Mo.banc.1985).

Martin v Industrial Accident., 304 P2d 828 (Cal.App.1956)

Montgomery v Board of Retirement, 109Cal.Rptr. 181, 185-86 (Cal.Ct.App.1973)

Hester v Barnett, 723 S.W.2d 544 (Mo.App.W.D.1987)

Lewis v Califano, 616 F.2d 73 (3rd.Cir.1980)

II

THE INDUSTRIAL COMMISSION DID ERR IN HOLDING THAT EMPLOYEE’S DEATH DID NOT ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT, AND THE COURT OF APPEALS OPINION MUST BE AFFIRMED, FOR THE REASON THAT THE MEDICAL EVIDENCE AND MEDICAL TESTIMONY DEMONSTRATE THAT EMPLOYEE’S DECISION TO REFUSE A BLOOD TRANSFUSION DID NOT BREAK THE MEDICAL CAUSAL CONNECTION BETWEEN THE 4/30/00 ACCIDENT AND EMPLOYEE’S DEATH ON 4/20/00.

Williford v. Lester E. Cox Med., Ctr., 3 S.W.3d 872, 877 (Mo.App.S.D. 1999).

STANDARD OF REVIEW

On appeal from a decision of the Commission, we review questions of law and will refer, remand, modify or set aside the Commission's decision only where we find one of the following: (a) that the Commission acted without or in excess of its power; (2) that the Award was procured by fraud; (3) that the facts found by the Commission do not support the award; or (4) that there was not sufficient competent evidence in the record to warrant the making of the award. *Zimmerman v. City of Richmond Heights*, 194 S.W.3d 875, 876 (Mo.App. E.D.2006) (citing section 287.495.1). The Commission's factual findings are conclusive if they are without fraud and supported by substantial and competent evidence on the whole record. *Wilcut v. Division of Employment Security*, 193 S.W.3d 410, 412 (Mo.App. E.D. 2006). This standard is not met when the award is against the overwhelming weight of the evidence. *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 222-23 (Mo.banc 2003). We are not bound, however, by the Commission's determinations of questions of law, which we review independently. *Wilcut*, 192 S.W.3d at 412. We defer to the Commission's determinations of Witness credibility and its resolutions of conflicting evidence. *Id.*

ARGUMENT

THE INDUSTRIAL COMMISSION DID ERR IN RULING THAT EMPLOYEE'S REFUSAL TO ACCEPT A LIFE-SAVING BLOOD TRANSFUSION WAS AN UNREASONABLE REFUSAL OF MEDICAL TREATMENT WITHIN THE MEANING OF SECTION 287.140.5 OF THE WORKERS' COMPENSATION ACT, BARRING EMPLOYEE'S DEPENDENTS FROM RECOVERING DEATH BENEFITS; AND THE COURT OF APPEALS OPINION MUST BE AFFIRMED, FOR THE REASON THAT:

A.

IT IS SPECULATIVE THAT THE EMPLOYEE'S REFUSAL TO ACCEPT BLOOD TRANSFUSION WAS THE CAUSE OF HIS DEATH, AND EVEN IF IT WAS, SECTION 287.140.9 OF THE ACT ALLOWS FOR AN EMPLOYEE TO HAVE PRAYER OR SPIRITUAL MEANS.

In the instant case, the Court of Appeals has recognized that the employee had sincere religious beliefs which prohibited him from taking blood transfusions. In its analysis, this Court should adopt the reasoning of *Penner v. King*, 695 S.W.2d 887,889 (Mo.banc.1985). It presumes the employee's beliefs are valid and sincerely held; and to proceed from that assumption to do otherwise, would require

the Court to take an impermissible analysis as to the validity and sincerity of employee's religious beliefs. *Id.* at 89.

The respondent's argument relies primarily upon *Martin v. Industrial Accident Commission*, 304 P2d 828 (Cal.App.2d.1956). This case has been reversed and the decision in that case is 'ratio decidendi' by *Montgomery v. Board of Retirement*, 109 Cal. Rptr. 181, 185-86 (Cal.Ct.App.1973). The respondent continues to try and breed life into the *Martin* case. It is not from the State of Missouri, it has been expressly overturned in its own state, the case is over fifty years old, and California law does not have a comparable section like 287.140.9, in which to harmonize with the language in its Workers' Compensation Act.

Public benefits and workers' compensation benefits are both creatures of statute. The employee had an absolute right to workers' compensation benefits so long as the respondent was subject to the Act and had an injury within the course and scope of employment, and met the other requirements of the Workers' Compensation Act, including Section 287.140. No other Court has relied upon *Martin* since it was overturned in 1973. Why should this Court rely upon an older case that is no longer law in its own jurisdiction, especially when California law did not have a statute comparable to 287.140.9?

The respondent defines both 'prayer' and the term 'spiritual' but failed to define 'means'. The Merriam-Webster Collegiate Dictionary, 11th Edition, defines

“means” as resources available for disposal or for the use of. Under the liberal construction of the Workers’ Compensation Act at the time of the accident, “spiritual means” can be given a common sense definition. The employee, using resources available to him as a Jehovah’s Witness, abstained from blood transfusions in order to effect matters of the spirit; namely, to have right standing before God in order to assure his salvation, and hopefully get better physically. The beliefs of the employee were sincerely held, and they included the sincerity of believing in abstaining from blood transfusions. He did not want to commit a grievous sin, and effect his eternal salvation by taking blood transfusions. According to his religious tenets, he had no hope of getting better or having salvation if he did not employ those “spiritual means” in his relationship with God.

The respondent adopts the reasoning of Judge Romines. His interpretation of the statute simply allowed the employee to be seen by a pastor or receive prayer. Section 287.140.9 must be examined in its entirety as follows:

‘Nothing in this chapter shall prevent an employee being provided treatment for his injuries by prayer or spiritual means if the employer does not object to the treatment’.

To follow Judge Romines interpretation, the respondent has an opportunity to object to prayer or spiritual means, such as seeing a pastor or some other religious leader. This is disturbing because it would allow the respondent to prohibit any

contact with any spiritual leader if it so chose. I cannot imagine that the Missouri State Legislature intended such a meaning.

The respondent also talks about the treatment for injuries or prayer or spiritual means to include the activities of a Christian Scientist, but not to include the “spiritual means” used by a Jehovah’s Witness. This is the type of impermissible constitutional construction that would clearly be unconstitutional and violate the First Amendment by establishing one religion over another. *Lewis v Califano*, 616 F.2d 73 (3rd.Cir.1980).

Section 287.140.9, as liberally constructed pursuant to the Act, certainly encompasses the employee’s use of spiritual means. The respondent had the opportunity to avoid responsibility for liability for the employee’s injuries by simply objecting to the treatment. There is nothing on the record to suggest that the respondent or any of its agents or representatives at any point objected to the treatment.

B.

THE EMPLOYEE HAD A STATUTORY RIGHT TO IMPOSE THE CONSEQUENCES OF HIS DECISION ON THE EMPLOYER BECAUSE THE EMPLOYER DID NOT OBJECT TO HIS EXERCISING HIS RELIGIOUS BELIEFS AS THE STATUTE REQUIRES A “HARMONIZING” OF SECTION 287.140.5 AND SECTION 287.140.9 OF

THE ACT; AND THERE IS NO VIOLATION OF THE MISSOURI AND UNITED STATES CONSTITUTION IN SUCH HARMONIZATION.

The respondent “crows” about allowing the employee to exercise his religious beliefs, even though the result of that decision resulted in his death. A reading of Section 287.140.9 of the statute would clearly indicate that a straight forward interpretation of that statute allows them to escape liability for the employee’s decision if they would simply object. That is the only burden put on the respondent in this case to avoid liability, and they failed to exercise that right under the statute. At this point, they want to portray themselves as magnanimous by allowing the employee to exercise his religious beliefs.

The respondent meanders into tort law and mitigation of damages. This case is simply a statutory construction case involving rights to workers’ compensation benefits under state law. Section 287.140.5 and 287.140.9 must be harmonized in a way which includes the statutory intent of liberal construction at the time of the injury.

The respondent argues that the Eastern District created a “Jehovah’s Witness” exception to 287.140.5. To the contrary, religious beliefs were protected by the Eastern District pursuant to 287.140.9, which include a Jehovah’s Witness decision to abstain from blood transfusions. Again, the respondent had the right under that statute to avoid liability by simply objecting to the treatment. This is consistent

with the intent of the Workers' Compensation Act because it allows the respondent to exercise control of the medical care. They had the opportunity to do so here, but failed.

This case gives no preference to the employee's status as a Jehovah's Witness. The respondent argues this 'preference' violates the First Amendment of the Constitution. It argues that the Industrial Commission would have to make a prohibited determination as to whether the employee's religious beliefs were sincerely held. However, in *Hester v Barnett*, 723 S.W.2d 544 (Mo.App.W.D. 1987), the Court can and does determine whether the religious beliefs are held in good faith in constitutional analysis. Absent sincerely held or good faith religious beliefs, this case would involve fraud, which has never been alleged by the respondent. Again, the respondent attempts to divert the issues of the case by prohibiting the employee to receive his rightful benefits pursuant to the Missouri Workers' Compensation Act. The consequences of employers action; namely, the liability under the Workers' Compensation Act, was avoidable by simply objecting to the employee's course of treatment.

II

THE INDUSTRIAL COMMISSION DID ERR IN HOLDING THAT EMPLOYEE'S DEATH DID NOT ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT, AND THE COURT OF APPEALS OPINION MUST BE AFFIRMED, FOR THE REASON THAT THE MEDICAL EVIDENCE AND MEDICAL TESTIMONY DEMONSTRATE THAT EMPLOYEE'S DECISION TO REFUSE A BLOOD TRANSFUSION DID NOT BREAK THE MEDICAL CAUSAL CONNECTION BETWEEN THE 4/13/00 ACCIDENT AND EMPLOYEE'S DEATH ON 4/20/00.

The respondent attempts to cut off causal-connection between the accident and the death of the employee. Common sense tells you that the truck accident was a substantial factor in causing the death of the employee. If the employee did not have the truck accident, then he would not have lost a substantial amount of blood, and would not have had to face a choice between a blood transfusion and his religious beliefs. Again, causation is another diversion in order to avoid Section 287.140.9, and harmonizing that section with Section 287.140.5.

CONCLUSION

The Court of Appeals opinion must be affirmed. A liberal construction of the Workers' Compensation Act at the time of the injury requires real meaning to Section 287.140.9, which needs to be harmonized with Section 287.140.5. The statutory intent appears to be obvious that if the respondent wanted to avoid liability for the consequences of the employee's religious beliefs, they should have objected to the "spiritual means" utilized by the employee during the course of his treatment.

Respectfully Submitted,

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Certificate of Service

A copy of the foregoing was mailed this 12th day of October, 2007, to: Mary Anne Lindsey and George Floros, Attorneys for Respondent, 515 Olive St., Ste. 1100, St. Louis, MO 63101, Keturah A. Dunne, Attorney for Amicus Curiae, at Watchtower Bible & Tract Society, 100 Watchtower Dr., Patterson, NY 12563.

Gary G. Matheny

CERTIFICATE OF COMPLIANCE

This Brief complies with Rule 84.06(b) and contains 5,347 words. To the best of my knowledge and belief, the enclosed disc has been scanned and is virus-free.

Gary G. Matheny