

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

ROBIN J. WILSON,

Appellant-Respondent,

v.

IMAGE FLOORING, LLC, and BRANDON RAPP,

Respondents-Appellants.

DOCKET NUMBER WD75141

(Consolidated with WD75142)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 19, 2013

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable James F. Kanatzar, Judge

JUDGES

Division Two: Mitchell, P.J., and Newton and Hardwick, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ROBIN J. WILSON,)
)
 Appellant-Respondent,)
v.) **OPINION FILED:**
) **March 19, 2013**
IMAGE FLOORING, LLC, and)
BRANDON RAPP,)
)
 Respondents-Appellants.)

WD75141 (Consolidated with WD75142)

Jackson County

Before Division Two Judges:

Karen King Mitchell, Presiding Judge, and
Thomas H. Newton and Lisa White Hardwick,
Judges

This is a negligence case arising from an accident wherein a box truck, owned by Image Flooring and driven by Brandon Rapp, rolled away from a loading dock, resulting in Robin Wilson falling to the concrete surface below and breaking her right leg. Wilson filed suit in Missouri against Image Flooring and Rapp, alleging that Rapp was negligent in securing the vehicle before loading, that Image Flooring (as Rapp's employer) was vicariously liable for Rapp's conduct, and that Image Flooring was also directly liable for negligent hiring, negligent training, negligent supervision, and negligent entrustment. Before trial, Image Flooring and Rapp moved for partial summary judgment on Wilson's direct liability negligence claims against Image Flooring. The trial court granted the motion, and the case proceeded to jury trial on the general negligence and vicarious liability claims, resulting in a verdict in favor of Wilson.

Wilson appeals the grant of partial summary judgment, arguing that the trial court applied an incorrect legal standard in granting the motion. Image Flooring cross-appeals from the jury verdict, arguing that the trial court erred in applying Missouri, rather than Kansas, law regarding comparative fault and damage caps and in overruling Image Flooring's motion for judgment notwithstanding the verdict on the ground that Wilson's conduct constituted a superseding cause for her injuries, thereby relieving Image Flooring and Brandon Rapp of any liability.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Division Two holds:

1. There is a punitive damages exception to the Missouri Supreme Court's holding in *McHaffie v. Bunch*, 891 S.W.2d 822 (Mo. banc 1995), which held that a plaintiff is precluded from bringing direct negligence claims against an employer in a negligence action where the employer admits vicarious liability and the sole basis for the employer's liability is determined by the negligence of its employee.
2. To invoke the punitive damages exception to *McHaffie*, a plaintiff must sufficiently plead facts supporting a claim for punitive damages.
3. Here, Respondents moved for summary judgment on the ground that *McHaffie* precluded the alleged acts of direct negligence against Image Flooring and argued that there was no punitive damages exception. The trial court granted summary judgment on the basis that, even if a punitive damages exception existed, Appellant failed to invoke it by not demonstrating sufficient facts to support the allegation of punitive damages. But because the sufficiency of the factual support for Appellant's punitive damages claims was not raised by movant, it erred in granting summary judgment on this basis.
4. In a conflict of law situation, Missouri courts follow the "most significant relationship test" of the Restatement (Second) of Conflict of Laws. Under the Restatement approach, when the conflicted issue involves a right of recovery (such as comparative fault rules and statutory damage caps), as opposed to a question of liability, the domicile of the parties is the most significant factor.
5. Here, all parties were residents of, or domiciled in, Missouri; thus, Missouri had a greater interest than Kansas in applying its rules of recovery. Therefore, the trial court did not err in applying Missouri's pure comparative fault rules and in refusing to apply Kansas's statutory damage caps.
6. In evaluating whether a particular act or omission constitutes a sufficient break in the chain of events so as to be considered an intervening cause of damages in a negligence case, Missouri follows the Restatement (Second) of Torts § 442.
7. According to the § 442 factors, Wilson's failure to remove the forklift extenders did not constitute a superseding cause of her injuries. Thus, the trial court did not err in overruling Respondents' motion for judgment notwithstanding the verdict.

Opinion by: Karen King Mitchell, Presiding Judge

March 19, 2013

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