

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

RONALD and PATRICIA BASTA, as heirs at law to JOSEPH BASTA,

Respondents,

v.

KANSAS CITY POWER & LIGHT COMPANY,

Appellant.

DOCKET NUMBER WD77251

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 16, 2014

APPEAL FROM

The Circuit Court of Buchanan County, Missouri
The Honorable Weldon C. Judah, Judge

JUDGES

Division II: Ellis, P.J., and Pfeiffer and Witt, JJ.

CONCURRING.

ATTORNEYS

Michael P. Healy, Lee's Summit, MO
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Attorneys for Respondents,

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Attorneys for Appellant.



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

RONALD and PATRICIA BASTA, as)
heirs at law to JOSEPH BASTA,)
)
Respondents,)
v.)
)
KANSAS CITY POWER & LIGHT)
COMPANY,)
)
Appellant.)

OPINION FILED:
December 16, 2014

WD77251

Buchanan County

Before Division II Judges: Joseph M. Ellis, Presiding Judge, and Mark D. Pfeiffer and Gary D. Witt, Judges

Kansas City Power & Light Company ("KCP&L") appeals the Judgment of the Circuit Court of Buchanan County, Missouri ("trial court"), entered on a jury verdict in favor of Ronald and Patricia Basta ("the Bastas") in their action for the wrongful death of their son, Joseph Basta ("Joey"). Joey, a roofer, was electrocuted while working near a service drop line.

The Bastas originally brought a wrongful death action against the homeowners and KCP&L, the supplier of electrical service to the house. The homeowners produced two experts, both of whom were deposed by the parties, including KCP&L. Thereafter, the Bastas voluntarily dismissed their suit, without prejudice. Subsequently, the Bastas re-filed their wrongful death action against the same parties. The case ultimately went to trial against only KCP&L.

KCP&L contends that the trial court erred in: (1) denying its motion for new trial because there was no substantial evidence in the record either: (a) that KCP&L had any duty to maintain the height of the service drop line at eighteen inches above the roof; or (b) that the height of the service drop line more probably than not actually or proximately caused or contributed to cause Joey's accident; (2) overruling KCP&L's objection to the Bastas reading at trial part of the deposition testimony of two experts; and (3) submitting the Bastas' verdict-directing instruction to the jury because the instruction improperly defined "negligent" or

“negligence” as failure to use the highest degree of care, and where injury is caused by low voltage rather than by high voltage, a utility should be held to an ordinary care standard.

AFFIRMED.

Division II holds:

1. KCP&L did not challenge the foundation of or otherwise object to the expert testimony regarding KCP&L’s duty to maintain an eighteen-inch clearance; and once opinion testimony has been admitted, it may be relied upon for purposes of determining the submissibility of the case. Viewing the evidence in the light most favorable to the verdict, there is substantial circumstantial evidence of both a “but for” and “proximate” causal connection between the service drop line negligence argument and Joey’s death.

2. An exception to the general rule—that a deposition taken in a prior case is inadmissible because the parties not involved in the prior deposition had no real opportunity to cross-examine the witness—exists when there is a clear identity of issues and of parties. Here, experts were designated by the homeowners and deposed by the parties, including KCP&L, during pretrial discovery in the Bastas’ original wrongful death suit against the homeowners and KCP&L. The parties stipulated that discovery from the dismissed case would be used in the present case as though taken in the present case. There is identity of issues and parties in the two cases.

3. The undisputed evidence at trial was that low-voltage currents are as dangerous and, often, more dangerous than high-voltage currents and are certainly inherently deadly. Missouri courts have repeatedly held that a supplier of electricity is required to exercise the highest degree of care to prevent injury.

Opinion by: Mark D. Pfeiffer, Judge

December 16, 2014

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