

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

MIKE LOTH, Appellant) No. ED94105
)
vs.) Appeal from the Circuit Court
) of the City of St. Louis
UNION PACIFIC RAILROAD)
COMPANY, Respondent.) Filed: April 12, 2011

Plaintiff Mike Loth filed a Federal Employer’s Liability Act action against defendant Union Pacific Railroad Company. The trial court entered summary judgment in favor of the railroad, holding that the plaintiff was judicially estopped from proceeding with his action because he had failed to include the lawsuit as an asset when obtaining a discharge of his debts in bankruptcy court.

JUDGMENT REVERSED; CAUSE REMANDED

DIVISION THREE HOLDS: The trial court impermissibly made credibility determinations in awarding summary judgment in favor of the railroad. Furthermore, the railroad required an inference to establish its right to summary judgment. However, the evidence reasonably supports two inferences – one in favor of the railroad and one in favor of the plaintiff – regarding the plaintiff’s intent in failing to disclose his claim. Accordingly, summary judgment is not proper.

Opinion by: Lawrence E. Mooney, J. Sherri B. Sullivan, P.J., concurs.
Clifford H. Ahrens, J., dissents in separate opinion.

Attorneys for Appellant: Leonard P. Cervantes, Jennifer Suttmoeller, and
Joseph A. Terry

Attorneys for Respondent: Stephen M. Buckley, Ann E. Buckley

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