

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JAN CARMAN, Plaintiff/ Appellant) No. E98872
) Appeal from the Circuit Court
vs.) of St. Louis County
) Honorable David Lee Vincent, III
PAT WEILAND, Defendant/Respondent.) Filed: July 16, 2013

The plaintiff appeals the grant of summary judgment entered by the Circuit Court of St. Louis County in favor of the defendant. The defendant moved for summary judgment on two different bases. The trial court granted summary judgment on one basis, but denied it on the other.

AFFIRMED.

DIVISION FOUR HOLDS: We conclude that the trial court's grant of summary judgment on the basis that the defendant qualifies as an "officer" under section 516.130(1) was erroneous. To the contrary, the defendant here was not an "officer" within the meaning of section 516.130(1).

However, we also hold that a co-employee owes to a fellow employee no common-law duty to exercise ordinary care and safety requiring the co-employee to refrain from operating a motor vehicle in a negligent manner when driving in the course of his work. As a matter of law, that responsibility is subsumed within the employer's non-delegable duty to provide a safe working environment. Because the plaintiff failed to allege any duty independent of the employer's non-delegable duty to provide a safe working environment, the trial court should have granted summary judgment for the defendant on the basis of his lack of duty.

Because the trial court reached the correct result, even though on the wrong basis, we affirm the trial court's grant of summary judgment to the defendant.

Opinion by: Lawrence E. Mooney, P.J. Patricia L. Cohen, J., and Kurt S. Odenwald, J. concur.

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