

Summary of SC89728, *Karri Kinnaman-Carson and Randy Carson v. Westport Insurance Corporation and ABC Specialty, Inc. d/b/a ABC Tow a/k/a ABC Tow*
Appeal from the Jackson County circuit court, Judge Jay A. Daugherty

Attorneys: The Carsons were represented by Jonathan Sternberg and Dennis Owens of Owens & Baker in Kansas City, (816) 474-3000, and Joseph M. Backer of The Backer Law Firm LLC in Independence, (816) 283-8500; and the insurer was represented by Barry McCormick, Edward M. Boyle and Kim J. Poirier of McCormick, Adam & McDonald PA in Overland Park, Kan., (913) 647-0670.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A wife and her husband recovered a judgment for injuries then sued to collect the amount of the judgment from an insurance company. The circuit court granted summary judgment for the company. In a unanimous decision written by Chief Justice Laura Denvir Stith, the Supreme Court of Missouri reverses the circuit court's judgment and remands (sends back) the case for further proceedings. Because the company was bound by its agreement with its insured in the couple's underlying tort suit that it would not deny coverage, it now cannot claim that the policy, in fact, did not cover this claim for damages.

Facts: Karri Kinnaman-Carson was injured in 2004 in an accident with a vehicle owned by ABC Tow, which was insured by Westport Insurance Corporation. She and her husband sued the driver of the vehicle and ABC Tow for negligence. Westport at first refused to defend ABC Tow in the suit but ultimately agreed it would defend "without a reservation of rights" (meaning it promised it would not deny coverage later). ABC Tow accepted. By the time the companies reached this agreement, however, ABC Tow already had settled the case and a judgment had been entered against it. When the Carsons tried to collect from Westport on ABC Tow's policy in a garnishment suit, Westport refused to pay and argued its policy did not cover the accident, which it said was fair because it did not realize that a judgment had been entered or a settlement reached in the tort case. Westport did not appeal the judgment in the tort case or move to set it aside. Rather, it filed a motion for summary judgment in the garnishment case alleging a coverage defense. The circuit court granted summary judgment to Westport in the garnishment case. The Carsons appeal.

REVERSED AND REMANDED.

Court en banc holds: Westport's agreement to defend the Carsons' suit against ABC Tow, without a reservation of rights, prevents it from later asserting a coverage defense in the garnishment action. It was Westport's obligation to keep track of the progress of the underlying suit. As a result, when it made its promise to cover the claim, Westport should have known that the case had settled and that a judgment had been entered. Unfairness, if

any, in that promise should have been raised by seeking relief from the judgment in the underlying suit, either on appeal or by seeking to set aside the judgment. Westport cannot use the garnishment action to contest coverage as if it had not already waived its right to raise coverage defenses. It is bound by its agreement.