

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

**PATRICIA SAPP, SHEILA BENNETT, CHRISTINE PHILLIPS and ARCIE
SAPP, JR., APPELLANTS,**

v.

**MORRISON BROTHERS COMPANY and ECKELBERRY SERVICE CO.,
RESPONDENTS.**

DOCKET NUMBER WD68928

DATE: May 19, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE MICHAEL W. MANNERS, JUDGE

Appellate Judges:
Division Three: Victor C. Howard, P.J., Joseph M. Ellis and Alok Ahuja, JJ.

Attorneys:
J. Kent Emison, Lexington, and David L. Steelman, Rolla, **for appellants.**

Susan Ford Robertson, Columbia, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS – WESTERN DISTRICT

PATRICIA SAPP, SHEILA BENNETT, CHRISTINE PHILLIPS
and ARCIE SAPP, JR.,

APPELLANTS,

V.

MORRISON BROTHERS COMPANY and
ECKELBERRY SERVICE CO.,

RESPONDENTS.

WD68928

Jackson County

Before Division Three Judges: Victor C. Howard, P.J., Joseph M. Ellis and Alok Ahuja, JJ.

On January 7, 2005, Arcie Sapp, an employee of MFA Oil, Inc., was severely burned when unleaded gasoline ignited while he was pumping fuel into a bulk storage tank at an MFA facility. Mr. Sapp died of his injuries twelve days later.

Plaintiffs-Appellants (“the Sapps”) brought this wrongful death suit against various defendants, including Morrison Brothers, for the death of Arcie Sapp. As relevant here, the Sapps claimed that the accident was caused by the malfunctioning of the storage tank’s emergency vent, and another combination vent/alarm, both of which were manufactured by Morrison Brothers.

After a two-week jury trial, the Sapps’ claims against Morrison Brothers were submitted on multiple theories, including strict liability and negligence claims for defective design and failure to warn with respect to both the vent/overflow alarm and the emergency vent. The jury returned a verdict for Morrison Brothers. The Sapps appeal.

AFFIRMED.

Division Three holds:

The Sapps first argue they are entitled to a new trial because, during voir dire, a juror failed to disclose information about prior litigation in which she had been involved. Where a verdict is challenged on the basis of juror nondisclosure, the threshold inquiry is whether, from an objective standpoint, the voir dire questioning clearly and unambiguously called for the information the juror withheld. As the trial court found, the voir dire questioning here did not clearly and unambiguously trigger the juror’s obligation to disclose the omitted information regarding her involvement in prior litigation, regardless of the juror’s post-trial statement that she subjectively understood that the questions asked during voir dire required her to disclose the prior litigation. Accordingly, the Sapps are not entitled to a new trial on the basis of juror nondisclosure.

The Sapps also argue that they are entitled to a new trial based on the trial court's failure to strike a different juror for cause, because she made unequivocal statements of bias or prejudice. When questioned during voir dire, the challenged juror made clear that while she may have had particular views concerning plaintiffs' lawyers, damages caps, and frivolous lawsuits, she would nevertheless view the facts and evidence in light of the law as instructed. The trial court was in the best position to assess whether the juror could do so, and it did not abuse its discretion in refusing to strike the challenged juror for cause.

Finally, the Sapps argue that the trial court committed reversible error by failing to give the jury a limiting instruction concerning evidence of communications with, and the conduct of, Arcie Sapp's employer, MFA Oil. However the evidence at issue was relevant not only to punitive damages – the limitation the Sapps asked the trial court to impose – but was also relevant to the Sapps' claims for negligent design and negligent failure to warn. Because the Sapps were not entitled to an instruction limiting the jury's consideration of the evidence in the manner they requested, the trial court did not err in refusing to give a limiting instruction.

Opinion by: Alok Ahuja, Judge

May 19, 2009

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