

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

BOYD H. MCGATHEY AND DEBRA A. AUGUSTINE, RESPONDENTS,

v.

MATTHEW C. DAVIS, APPELLANT.

**DOCKET NUMBER WD69031
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 27, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JUSTINE ELISA DEL MURO, JUDGE

Appellate Judges:
Division Two: Lisa Hardwick, P.J., Victor Howard and Joseph P. Dandurand, JJ.

Attorneys:
Patrick W. Peters, Esq., Kansas City, MO, **for appellant.**

Christopher Sweeney, Esq., Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS – WESTERN DISTRICT

BOYD H. MCGATHEY AND
DEBRA A. AUGUSTINE,

RESPONDENTS,

V.

MATTHEW C. DAVIS,

APPELLANT.

WD69031

Jackson County

Before Division Two Judges: Lisa Hardwick, P.J., Victor Howard and Joseph Dandurand, JJ.

Matthew Davis appeals the judgment of the Circuit Court of Jackson County in favor of Boyd McGathey and Debra Augustine in their case against Matthew Davis for interference with their right of sepulcher and burial of their daughter, Amber McGathey.

Affirmed.

Division Two holds:

Mr. Davis presents five points on appeal. The points are denied, and the judgment is affirmed.

First, Davis claims the trial court erred in denying his motion for directed verdict because the petition for interference with the right of sepulcher and burial failed to state a cause of action. Davis claims he did not owe a duty of care to McGathey, Augustine, or their daughter. Missouri, however, has long recognized the duty of every person not to interfere with the right of sepulcher, and the facts alleged in McGathey's and Augustine's petition sufficiently established a legal duty.

Second, Davis contends the trial court erred in failing to grant his motion to set aside the verdict because the state statute requiring a person to notify law enforcement of a dead body violates his Fifth Amendment right against self-incrimination. Davis waived this argument, however, by not raising the alleged unconstitutionality of the statute at the earliest opportunity. Moreover, the judgment against Davis was not for his failure to inform law enforcement of the location of the decedent's body – it was for the manner in which he disposed of the body.

Third, Davis argues the trial court erred in preventing him from calling the medical examiner as a witness. Davis asserts the medical examiner would have provided knowledge that would have assisted the jury and that the trial court's

refusal to allow such testimony deprived the jury of relevant and material facts concerning the manner and cause of death as well as the condition of the decedent's body. The medical examiner's testimony, however, would not tend to prove or disprove any fact necessary for determination of the issue before the jury, which was whether Davis interfered with McGathey's and Augustine's right of sepulcher and burial of their daughter.

Fourth, Davis asserts the trial court erred in admitting photographs of the decedent's body because the injuries suffered by McGathey and Augustine were limited to what they had been told about their daughter's body. He contends that because McGathey and Augustine never saw their daughter's body, the photographs shown to the jury of the body were irrelevant and prejudicial. The photographs to which Davis refers, however, are not a part of the record on appeal and thus cannot be considered.

Fifth, Davis contends the trial court erred in not granting remittitur and that the jury's verdict of \$250,000 each to McGathey and Augustine was excessive under the evidence and/or was due to trial court error. The jury, however, heard testimony from both McGathey and Augustine about the mental anguish and suffering caused by the circumstances surrounding their daughter's death and burial. The trial court and jury were in the best position to assess the credibility of and the damages suffered, and in light of the evidence presented at trial, the jury's award does not shock the conscience.

Opinion by: Joseph P. Dandurand, Judge

February 27, 2009

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.