



**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

KELLY POPE, RESPONDENT,

v.

JOEL RAY, APPELLANT.

DOCKET NUMBER WD69384

DATE: September 1, 2009

Appeal From:
BOONE COUNTY CIRCUIT COURT
THE HONORABLE DENNIS ALLEN ROLF, JUDGE

Appellate Judges:
Division Three: James M. Smart, Jr., P.J., Joseph M. Ellis and James E. Welsh, JJ.

Attorneys:
Susan F. Robertson, Columbia, MO, **for appellant.**

Danieal H. Miller, Columbia, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

KELLY POPE, RESPONDENT

v.

JOEL RAY, APPELLANT

WD69384

BOONE COUNTY CIRCUIT COURT

Before Division Three Judges: James M. Smart, Jr., P.J., Joseph M. Ellis and James E. Welsh, JJ.

Kelly Pope, through her next friend, filed a lawsuit against her father's psychologist, Bruce Strnad, PhD., and his partner, Joel Ray, PhD. She raised various claims based on the doctors' failure to report to the authorities that Kelly's father had been sexually abusing her and their failure to warn Kelly, her mother, or anyone in a position to help, that he posed an ongoing threat to Kelly. The trial court dismissed the petition for failure to state a claim. This court affirmed the dismissal as to all claims except one for negligent breach of a treating psychologist's common law duty to warn or protect when there is an identifiable victim.

After reaching the age of majority, Kelly Pope refiled her lawsuit. She and the defendant *ad litem* for Dr. Strnad (who had since passed away) agreed to limit the collection of damages to those that could be recovered from the insurer and to submit the claim to arbitration. The case against Dr. Ray went to trial. The jury found Dr. Ray vicariously liable for Dr. Strnad's negligence and awarded Ms. Pope \$5 million in damages and over \$5 million in interest. A few months later, an arbitration panel awarded Kelly Pope \$8 million in damages and over \$8 million in interest in her case against Dr. Strnad. Dr. Ray appealed, and this court reversed as to damages but affirmed in all other respects. This court found that because the trial court erred in permitting evidence of the doctor's liability insurance to be published to the jury without a limiting instruction, justice required a new trial on damages. The case was remanded with directions to conduct a new trial on the limited issue of damages.

Following remand, the trial court, over Dr. Ray's objection, granted Ms. Pope's request to enter judgment against Dr. Ray in the amount of the arbitration award against Dr. Strnad without a trial. Dr. Ray appeals.

VACATED AND REMANDED.

Division Three holds: On remand, the scope of the trial court's jurisdiction is defined by the appellate court's mandate. The trial court is required to render judgment in conformity with the mandate and corresponding opinion. The opinion and mandate reversed the judgment against Dr. Ray as to damages and remanded with directions for the trial court to conduct a new trial on the limited issue of damages. Instead, the trial court granted Ms. Pope's motion to hold Dr. Ray liable for the amount of the arbitration award without conducting a trial. In doing so, the trial court exceeded the scope of this court's mandate. The judgment is vacated and remanded to the trial court with instructions to carry out the court's earlier mandate directing a new trial on the issue of damages only.

This ruling renders Dr. Ray's other two points on appeal moot.

Per Curiam Opinion

September 1, 2009

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