

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

TINA ROLLER, APPELLANT-RESPONDENT,

v.

**SARAH STEELMAN, TREASURER OF THE STATE OF MISSOURI, AS
CUSTODIAN OF THE SECOND INJURY FUND, RESPONDENT-APPELLANT.**

DOCKET NUMBER WD69720
(consolidated with WD69844)

DATE: November 10, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JOHN M. TORRENCE, JUDGE

Appellate Judges:
Division One: Alok Ahuja, P.J., James M. Smart, Jr., and Lisa White Hardwick, JJ.

Attorneys:
T.K. Thompson, Liberty, MO, **for appellant.**

Kimberley R. Fournier and Kara Harris, Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

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v.

SARAH STEELMAN, TREASURER OF THE STATE OF MISSOURI, AS
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JACKSON COUNTY CIRCUIT COURT

Before Division One Judges: Alok Ahuja, P.J., James M. Smart, Jr., and Lisa White Hardwick, JJ.

Tina Roller's husband, Tony Roller, suffered an on-the-job injury in 1998. In April 2003, the Division of Workers' Compensation awarded him permanent total disability benefits from the Second Injury Fund. Mr. Roller died of causes unrelated to his work injury on May 24, 2007, and the Fund stopped his benefits. Ms. Roller requested payment of the benefits to her as Tony Roller's dependent, based on the Missouri Supreme Court's January 9, 2007 decision in *Schoemehl v. Treasurer of Missouri*, 217 S.W.3d 900 (Mo. banc 2007). The Division refused.

Ms. Roller filed a petition against the Second Injury Fund seeking payment of her husband's benefits. She later filed a motion for summary judgment based on *Schoemehl*. The Fund argued that her claim is barred by *res judicata* because in the earlier award her husband did not raise, and the Commission did not adjudicate, any survivorship rights. The circuit court granted summary judgment for Ms. Roller based on *Schoemehl* and ordered reinstatement of benefits. The court denied Ms. Roller's motion for attorneys' fees. The Fund appeals the summary judgment ruling. Ms. Roller appeals the denial of attorneys' fees.

REVERSED AND REMANDED IN PART; DISMISSED IN PART.

Division One holds: The circuit court erred in granting summary judgment based on *Schoemehl*. Cases subsequent to *Schoemehl* have limited its applicability to situations where the injured employee's claim was *actually pending* between January 9, 2007 (the date of the *Schoemehl* decision), and June 26, 2008 (the effective date of changes to the statutes on which *Schoemehl* relied). Mr. Roller's award was final in 2003. Thus, his claim was no longer *pending* within the relevant time period, and *Schoemehl* does not apply.

In such cases, the Commission lacks the statutory authority to reopen and modify or amend a final award to grant benefits to a dependent. Ms. Roller sought, essentially, to

have the circuit court reopen her deceased husband's final award to add her as a party and to modify its terms to award her benefits. Like the Commission, the circuit court *also* lacked the statutory authority to do this. Section 287.500 authorizes a circuit court to enter a judgment on a final workers' compensation award as if it were an original judgment, but the judgment must be in accord with the Commission's final award.

The summary judgment is reversed, and the case is remanded for further proceedings consistent with this opinion. Ms. Roller's appeal of the denial of attorneys' fees is dismissed as moot.

Opinion by: James M. Smart, Jr., Judge

November 10, 2009

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