

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STACI M. LEWIS, AND MCCARTNEY M.E. LEWIS, A MINOR, BY  
AND THROUGH HER NEXT FRIEND, BURLE BROWN, Appellants

DOT TRANSPORTATION, INC., Appellant

v.

NATHAN R. GILMORE AND BUDDY FREEMAN. Respondents

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DOCKET NUMBER WD72629 and WD72654

DATE: April 12, 2011

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Appeal From:

Circuit Court of Linn County, MO  
The Honorable Gary E. Ravens, Judge

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Appellate Judges:

Division Three  
Cynthia L. Martin, P.J., James Edward Welsh, and Gary D. Witt, JJ.

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Attorneys:

George J. Miller, Eureka, MO	Counsel for Appellants, Lewis
Patrick M. Reidy, Kansas City, MO	Counsel for Appellant, DOT Transportation

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Attorneys:

William J. Foland, Jr., Kansas City, MO	Counsel for Respondents
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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STACI M. LEWIS, AND MCCARTNEY M.E. LEWIS, A  
MINOR, BY AND THROUGH HER NEXT FRIEND,  
BURLE BROWN, Appellants, DOT TRANSPORTATION,  
INC., Appellant, v. NATHAN R. GILMORE AND BUDDY  
FREEMAN, Respondents**

**WD72629 and WD72654**

**Linn County**

Before Division Three Judges: Martin, P.J., Welsh, and Witt, JJ.

Stacey M. Lewis and her daughter, McCartney M.E. Lewis, appeal the circuit court's grant of summary judgment in favor of Buddy Freeman in regard to the Lewises' wrongful death action. DOT Transportation, Inc., also appeals the circuit court's grant of summary judgment in favor of Freeman. The circuit court found that the Lewises had made an election of remedies when they obtained a workers' compensation award against DOT Transportation and that they were not entitled to maintain a civil action against Freeman. The Lewises and DOT Transportation contend that the circuit court erred in granting summary judgment because section 287.280.1, RSMo 2000, allowed the Lewises to proceed in a civil action against Freeman for his failure to insure his liability under the Missouri workers' compensation laws.

**REVERSED AND REMANDED**

**Division Three holds:**

The circuit court erred as a matter of law in concluding that the Lewises had made an election of remedies when they obtained a workers' compensation award against DOT Transportation and that the Lewises were not entitled to maintain a civil action against Freeman. Section 287.280.1 allowed the Lewises to proceed in a civil action against Freeman as a result of his failure to insure his liability under the Missouri workers' compensation laws even though the Lewises obtained a workers' compensation award against DOT Transportation as the statutory employer.

Opinion by James Edward Welsh, Judge

April 12, 2011

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