

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**BRIAN DANIEL RUSSELL, SR.,
APPELLANT
vs.**

**HEALTHMONT OF MISSOURI, LLC., d/b/a CALLAWAY COMMUNITY HOSPITAL,
RESPONDENT**

DOCKET NUMBER WD72861

DATE: AUGUST 23, 2011

Appeal from:

The Circuit Court of Callaway County, Missouri
The Honorable Jodie C. Asel, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

Attorneys:

J. Brian Baehr, for Appellant

Healthmont of Missouri, LLC, Respondent Pro-se

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BRIAN DANIEL RUSSELL, SR., APPELLANT

v.

**HEALTHMONT OF MISSOURI, LLC, d/b/a CALLAWAY COMMUNITY HOSPITAL,
RESPONDENT**

WD72861

Callaway County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

Appellant Brian Russell appeals from a judgment entered by the Circuit Court of Callaway County dismissing with prejudice a declaratory judgment action filed by Appellant, seeking a declaration that he could exempt in bankruptcy an unliquidated, personal-injury claim. The trial court dismissed Appellant's petition with prejudice "on the basis that the plaintiff is not entitled to the relief he seeks for the reasons set forth in *In re Mahoney*, 374 B.R. 717 (Bankr. W.D. Mo. 2007) and *In re Benn*, 491 F.3d 811 (8th Cir. 2007)."

REVERSED AND REMANDED.

Division Three holds:

(1) The trial court improperly dismissed Appellant's petition with prejudice for failure to state a claim upon which relief could be granted as the petition clearly stated a claim for declaratory relief. Appellant averred that he intended to file an order for bankruptcy protection in Missouri pursuant to Title 11 of the United States Code and that he was eligible for such relief. Appellant further claimed to have an unliquidated, personal injury claim stemming from an automobile accident. Appellant sought a declaration that he could exempt from the bankruptcy estate that unliquidated, personal-injury claim pursuant to § 513.427. Accordingly, his petition called for a declaration of whether or not he was entitled to exempt his unliquidated, personal-injury claim from his bankruptcy estate pursuant to § 513.427.

(2) Under Missouri law, an unliquidated, personal-injury claim can, if the proper procedures are followed and conditions satisfied, be exempted from his or her bankruptcy estate pursuant to § 513.427. The trial court erred in relying upon federal cases interpreting a Missouri statute in a manner contrary to that of established Missouri case law and could not have properly entered judgment on the pleadings in favor of the defendant in this case.

Opinion by Joseph M. Ellis, Judge

Date: AUGUST 23, 2011

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