

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

NOELLE HANKS, SUCCESSOR TRUSTEE OF THE WILLIAM L. HANKS TRUST
AGREEMENT OF JUNE 14, 2006,

Respondent

v.

PHIL MORRIS, ET AL.,

Appellant

DOCKET NUMBER WD76608

DATE: June 3, 2014

Appeal From:

Circuit Court of Nodaway County, MO
The Honorable Roger Martin Prokes, Judge

Appellate Judges:

Division One
Joseph M. Ellis PJ., Karen King Mitchell, Anthony Rex Gabbert, JJ.

Attorneys:

Scott Ross, Maryville, MO., Harlan D. Burkehead, Kansas City, MO. Counsel for Respondent,

Attorneys:

Michael Richard Ong, Leadwood KS, Counsel for Appellant

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**NOELLE HANKS, SUCCESSOR TRUSTEE
OF THE WILLIAM L. HANKS TRUST
AGREEMENT OF JUNE 14, 2006,**

Respondent,

v.

PHIL MORRIS,

Appellant.

WD76608

Nodaway County

Before Division One Judges: Joseph M. Ellis PJ., Karen King Mitchell, Anthony Rex Gabbert, JJ.

Phil Morris appeals from a judgment entered upon a jury verdict finding in favor of Noelle Hanks, successor trustee of the William L. Hanks Trust Agreement of June 14, 2006. Morris asserts that the court erred when: (1) it refused to submit his proffered Instruction Y to the jury and instruct the jury that, if it determined Morris was a trustee with special skills or knowledge, or named as trustee on that basis, it could consider whether Morris was entitled to additional compensation; (2) it refused to submit his proffered Instruction X to the jury thereby failing to instruct the jury on the proper legal standard for the imposition of liability upon a trustee for the actions of a co-trustee; (3) it submitted Instruction No. 6 to the jury which he contends failed to set forth the essential statutory elements for co-trustee liability, and; (4) it denied his post-trial motion for remittitur of punitive damages alleging that the damages imposed by the jury were grossly excessive and contrary to the law.

AFFIRMED

Division One holds:

- (1) The circuit court did err in refusing to submit Morris's Instruction Y to the jury.

Instruction Y does not follow substantive law with regard to Morris's affirmative defense that he performed special skills as trustee thereby entitling him to additional fees for the performance of extraordinary services and, even if the evidence might have supported an instruction setting forth Morris's affirmative defense, the court had no duty to submit a correct instruction in the place of Morris's erroneous instruction.

- (2) The circuit court did not err in refusing to submit Morris’s proposed Instruction X to the jury. Instruction X is misleading with regard to the substantive law of co-trustee liability as set forth in Section 456.7-703 and omits the necessary element of damages.
- (3) The circuit court did not err in submitting Instruction No. 6 to the jury. The “redress” language of Section 456.7-703.7 was not necessary to the instruction and Morris was not prejudiced by its exclusion.
- (4) The circuit court did not err in denying Morris’s post-trial motion for remittitur of punitive damages as the damages imposed are not grossly excessive in light of the evidence.

Opinion by Anthony Rex Gabbert, Judge

Date: 6/03/14

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