

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI ex rel. RED CROSS PHARMACY, INC.,

Relator,

v.

**THE HONORABLE LARRY D. HARMAN, Judge of the Circuit Court of Clay County at
Liberty,**

Respondent.

DOCKET NUMBER WD76777

Date: December 24, 2013

Appeal from:
Clay County Circuit Court
The Honorable Larry D. Harman, Judge

Appellate Judges:
Writ Division: Alok Ahuja, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

Attorneys:
Bradley C. Nielsen, Kansas City, MO for Relator, for appellant.
Eddie G. Dougherty and B.K. Christopher, Kansas City, MO and Dean C. Nichols, St. Louis,
MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI *ex rel.* RED CROSS PHARMACY, INC.

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**THE HONORABLE LARRY D. HARMAN, Judge of the Circuit Court of Clay
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Clay County

In the underlying action in the circuit court, plaintiff Amy Honeycutt alleges claims against various persons and entities for personal injuries she suffered as a result of the administration to her of certain anti-tuberculosis medications. Honeycutt alleges that she experienced multiple, serious side effects from the medications administered to her, and was ultimately required to undergo a liver transplant as a result. Honeycutt alleges that the Red Cross Pharmacy acted negligently in providing the anti-tuberculosis medications to her and to the health-care providers treating her, without adequate information concerning the proper administration, and potential side effects, of the medications.

Within 90 days of filing her claim against the Pharmacy, Honeycutt's counsel filed an affidavit stating that he had obtained the opinion of a pharmacologist and toxicologist that the Pharmacy had acted negligently. The Pharmacy moved to dismiss Honeycutt's claim against it, arguing that Honeycutt's health-care affidavit was insufficient to comply with § 538.225, RSMo, because Honeycutt had not obtained an opinion from someone who was licensed in, and practiced as, a pharmacist. In response, Honeycutt argued that § 538.225 was not applicable to her claims against the Pharmacy. She also submitted a supplemental affidavit, stating that she had obtained the opinion of a registered pharmacist that the Pharmacy had acted negligently. The Pharmacy moved to strike the supplemental affidavit, arguing that it had not been timely filed.

The trial court found that Honeycutt's original health-care affidavit failed to satisfy the requirements of § 538.225. It also found, however, that any deficiencies in the original affidavit had been cured by the supplemental affidavit. The Pharmacy filed a petition for writ of mandamus in this Court, asking that we order the trial court to dismiss Honeycutt's claim against it with prejudice. We issued a preliminary writ of mandamus, and ordered full briefing and argument.

PRELIMINARY WRIT OF MANDAMUS MADE ABSOLUTE

Writ Division holds:

Honeycutt concedes that, if § 538.225 applies to her claims against the Pharmacy, the trial court was required to dismiss her claims without prejudice, because her initial health-care affidavit was deficient, and her supplemental affidavit was not timely filed. Honeycutt argues, however, that § 538.225 is not applicable here, both because the Pharmacy is not a “health care provider” within the meaning of § 538.205(4), RSMo, and because the Pharmacy was not in a health-care provider/patient relationship with her, because she did not select the Pharmacy to supply her anti-tuberculosis medications, and because she had no direct contact with the pharmacy.

We reject both contentions. First, although a “pharmacy” is not separately identified as a “health care provider” in § 538.205(4), a “pharmacist” is identified, and the statute also comprehends within its definition “any other person or entity that provides health care services under the authority of a license or certificate.” This “catch-all” language is broad enough to include the Pharmacy.

Second, although the Pharmacy may not have been selected by Honeycutt, or had any direct contact with her, prior cases have recognized that a provider/patient relationship where the provider is contractually obligated to provide assistance in the patient’s diagnosis or treatment, and does so. That is the case here – the Pharmacy had a contract to provide anti-tuberculosis medications to fill prescriptions written at facilities like the one at which Honeycutt was treated, and it filled her prescription pursuant to its contractual relationship. The Pharmacy’s role in this case appears to be analogous to that frequently filled by a radiologist or pathologist, who may likewise have little or no direct contact with a patient, but who instead interacts with other health-care professionals in providing services essential to the patient’s successful treatment.

Before: Writ Division: Alok Ahuja, P.J., Victor C. Howard and Cynthia L. Martin, JJ.

Opinion by: Alok Ahuja, Judge

December 24, 2013

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