

IN THE SUPREME COURT OF MISSOURI

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DEBORAH WATTS as Next Friend for NAYTHON KAYNE WATTS,  
Appellant/Cross-Respondent,

vs.

LESTER E. COX MEDICAL CENTERS, d/b/a FAMILY MEDICAL  
CARE CENTER, LESTER E. COX MEDICAL CENTERS, MELISSA R.  
HERRMAN, M.D., MATTHEW P. GREEN, D.O., WILLIAM S. KELLY,  
M.D.,

Respondents/Cross-Appellants.

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Appeal from the Circuit Court of Greene County, Missouri  
The Honorable J. Dan Conklin, Circuit Judge

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REPLY BRIEF OF RESPONDENTS/CROSS-APPELLANTS

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## ARGUMENT

### **Repeated References in § 538.220 to “Future Medical Damages” and “Future Medical Periodic Payments” are Meaningful, and Not Simply Superfluous as Plaintiff Argues.**

There is a difference between “future damages” and “future medical damages.” That one is a subset of the other, it is true. However, this does not mean that a statute such as § 538.220, which plainly distinguishes between the two, should be rendered meaningless as to the differences. Yet, according to Plaintiff, if § 538.220 is “[r]ead as a whole,” then “future medical periodic payments” simply means future periodic payments and can be paid in any amount. Appellant/Cross-Respondent’s Brief at 37. This conclusion is not supported by the plain language of the statute, either in part or as a whole.

It is certainly true that the provisions of a statute must be “read as a whole” and not in isolation. *Board of Educ. of City of St. Louis v. Missouri State Bd. of Educ.*, 271 S.W.3d 1, 16 (Mo. banc 2008). But reading § 538.220 as a whole does not produce the interpretation Plaintiff suggests. In fact, it is the opposite. As set forth in the Defendants’ opening brief, the plain language of the statute establishes the method to determine the amount of future medical periodic payments – which is equal payments divided over the

life expectancy of the injured party. The statute as a whole further supports this same conclusion.

In the first subsection of § 538.220, the legislature provides that “past damages shall be payable in a lump sum.” § 538.220.1. There is no provision for paying past damages through either future or periodic/installment payments. Nor is there any distinction as to the type of past damages to be paid in a lump sum, such as past medical damages or non-economic damages. In this case, the jury awarded \$0 for past economic damages, including past medical damages, but awarded \$250,000 in past non-economic damages. Thus, \$250,000 should be paid in a lump sum in accordance with § 538.220.1.

In the second subsection of § 538.220, the legislature provides that if requested by a party, “future damages” shall be paid “in whole or in part in periodic or installment payments if the total award of damages in the action exceeds one hundred thousand dollars.” § 538.220.2. The award of damages in this case exceeded one hundred thousand dollars, and Defendants requested periodic or installment payments. Therefore, the trial court was required to award future damages in periodic or installment payments. Indeed, the statute does not give the trial court authority to pay no future damages in periodic or installment payments. Future damages, of course, can include future economic damages such as medical damages and future non-economic damages. Here, the jury awarded future damages, including “future medical damages” and “future non-economic damages.” Thus, in

accordance with the first sentence of subsection two, at least part of the future damages must be paid in periodic or installment payments. But that is not the end of subsection two.

Subsection two then gets more specific as to one type of future damages, and how those are to be paid. It provides that “[a]ny judgment ordering such periodic or installment payments shall specify a future medical periodic payment schedule.” § 538.220.2. As such, the periodic or installment payment schedule for future damages must separately identify a “future medical periodic payment schedule.” The method for arriving at the future medical periodic payment schedule is made clear in the very next sentences. “The duration of the future medical payment schedule shall be for a period of time equal to the life expectancy of the person,” which in this case is 50 years. *Id.* Then comes the calculation: “[t]he amount of each of the future medical periodic payments shall be determined by dividing the total amount of future medical damages by the number of future medical periodic payments.” *Id.* In three consecutive sentences the legislature specifically identifies “future medical damages” or “future medical periodic payments” five separate times. And there is no qualification or provision that permits only a part of the future medical damages to be paid through periodic or installment payments.

The different treatment of “future damages” and “future medical damages” is further confirmed in another subsection of § 538.220. In

subsection five, the legislature provides that upon the death of the injured person, “the right to receive payments of future damages, other than future medical damages” will pass in accordance with the probate code. § 538.220.5. The next sentence then provides that “[p]ayment of future medical damages” will stop once all medical expenses due and owing, and resulting from the injury, have been paid. *Id.* Thus, the statute contemplates that an injured party may not receive all future medical damages awarded in the judgment. Furthermore, it is evident by the repeated references in the statute that the legislature intended to treat “future medical damages” differently than simply any “future damages.” And the reason is equally obvious – the legislature wanted future medical damages to be paid for future medical expenses and not simply collected in a lump sum to be expended regardless of medical expenses. For these reasons, it would make no sense to allow a trial court to provide for future medical damages in a lump sum – which is the result if Plaintiff’s reasoning is accepted.

In his attempt to undermine the plain meaning of the statutory language, Plaintiff misapplies the language and the statute as a whole. For example, Plaintiff offers the following argument in an attempt to show that the term “shall” does not actually mean “shall”: “[t]he word ‘shall’ simply means the circuit court must make a determination as required by the statute.” Appellant/Cross-Respondent’s Brief at 41 n19. This strained

assertion is much like the Plaintiff's overall reading of § 538.220, unsupported by either reason or law.

### CONCLUSION

For the foregoing reasons, the trial court's judgment ordering partial periodic payments for future medical damages should be affirmed in part and reversed in part.

Respectfully submitted,

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## CERTIFICATE OF SERVICE AND COMPLIANCE

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 1,044 words.

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