

**Missouri Court of Appeals – Western District
Division Four
Gary D. Witt, Chief Judge, Presiding
Mark D. Pfeiffer, Judge
Thomas N. Chapman, Judge
Mason R. Gebhardt, Special Judge
April 20, 2023
Truman State University
Kirksville, Missouri**

WD85141

State of Missouri, Respondent,

v.

Roger D. Iman, Appellant.

Appellant Roger Iman appeals the judgment of the Circuit Court of Johnson County finding him guilty, following a bench trial, of one count of domestic assault in the second degree and one count of unlawful use of a weapon. The facts as alleged at trial were that the victim, D.L., was approximately fifty-years-old and was dating Iman's daughter. On September 17, 2021, D.L. had been living with his girlfriend, Iman, and Iman's wife for a month or two. That night, D.L. and his girlfriend went to bed early, but D.L. awoke at 11:00 or 11:30 p.m. to get something to drink. At that same time, Iman walked into the front door of the residence, and Iman and D.L. started arguing over D.L.'s treatment of a dog. D.L. testified that Iman called him a racial slur. D.L. went back to his bedroom but returned to the living room when Iman started banging on his door. When D.L. walked into the living room, Iman hit him with a club or a stick under his left armpit. D.L. took the club away, went to his room to tell his girlfriend what had happened, and then returned to the living room. When he returned, Iman hit him a couple times with an aluminum bat. Iman's daughter and wife came to the living room. As D.L. was reaching down for the dog, Iman put a knife to D.L.'s throat. D.L. tried to block the knife with his hand, and the knife cut his hand. Someone called 911, and D.L. went to the hospital. His hand required surgery to repair tendons and nerves that were cut. Iman was sentenced to a total of three years' imprisonment but the execution was suspended, and he was ordered to serve six months in jail as "shock time." This appeal follows.

Appellant's point on appeal:

1. The trial court erred in overruling Mr. Iman's motion for judgment of acquittal after the close of all evidence, and entering judgment and sentence for domestic assault in the second degree, because this violated Mr. Iman's rights guaranteed by the Due Process Clause of the 14th Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that there was insufficient evidence to prove beyond a reasonable doubt that Mr. Iman knowingly

caused physical injury to D.L.; instead, the evidence showed that Mr. Iman accidentally caused the injury when D.L. tried to block the knife with his hand.

WD85529

David Kubiak, Respondent,

v.

Missouri State Board of Nursing, Appellant.

Appellant Missouri State Board of Nursing appeals the decision of the Circuit Court of Cole County finding that, upon judicial review of an administrative decision of the Missouri State Board of Nursing, that the Board lacked authority to use its summary "auto-revoke" disciplinary procedure. Because this Court reviews the decision of the agency, not the circuit court, the Respondent David Kubiak filed the initial brief to challenge the administrative decision of the Board of Nursing. Kubiak is a registered professional nurse licensed by the Board. The facts as alleged during the administrative proceedings were that Kubrick pled guilty to class B misdemeanor DWI and received a suspended execution of sentence pending the completion of two years unsupervised probation. Kubiak had previously had two DWI convictions, one in 1998 and a second in 2003. Kubiak alleged that the latest incident came after a stressful period after the death of his mother and difficulties associated the COVID-19 pandemic. He admitted that, after the death of a 19-year-old patient, he stopped at a convenience store, bought and consumed beer, and was shortly thereafter arrested for DWI. The Board placed Kubiak on disciplinary probation. Kubiak objected to the Board's authority to hear the case, as well as the term of his probation, and sought judicial review in the circuit court. The circuit court found that the summary process used by the Board during the disciplinary process could not be used with the charge to which Kubiak pled guilty. The circuit court remanded the case to the Board for dismissal of the summary proceedings but noted that the Board was not foreclosed from proceeding in the traditional disciplinary process. On appeal, Kubiak asserts that the Board lacked the statutory authority to review his case under Missouri Revised Statute section 536.140 because a guilty plea to misdemeanor driving while intoxicated is not a crime of moral turpitude. Kubrick also asserts that the Board of Nursing's disciplinary order was entered in error because it violates the American with Disabilities Act. Finally, Kubrick maintains that this Court lacks jurisdiction to hear the present appeal because there is no final, appealable judgment because the circuit court dismissed the case with instructions which allowed the Board of Nursing to pursue action against Kubrick through a different administrative proceeding.

Appellant's points on appeal:

1. The Court of Appeals lacks jurisdiction in this case because there is no final, appealable judgment, in that the trial court dismissed the case with instructions allowing the Board of Nursing to pursue it through administrative proceedings.
2. The Board of Nursing erred in entering a disciplinary order against Kubiak, because it lacks statutory authority to issue a disciplinary order without a finding of cause for discipline by the Administrative Hearing Commission, reviewable under § 536.140.2(2) RSMo, in that a plea of guilty to a misdemeanor charge of driving while intoxicated is not a crime of moral turpitude.
3. The Board of Nursing erred in entering a disciplinary order against Kubiak that prohibited working with access to narcotics, limiting his hours and the circumstances of his work, and even limiting the foods he can eat and beverages he can drink, because it failed to consider the limitations of the Americans with Disabilities Act in adopting those terms, reviewable under § 536.140.2(4) RSMo, in that although the legitimate safety requirements necessary for the safe operation of the Board's services, programs, or activities may be imposed, it must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

WD85458

Knockerball MidMo, LLC, Appellant,

v.

McGowan & Company, Inc. d/b/a McGowan Excess & Casualty, Respondent.

Appellant Knockerball MidMo, LLC appeals the judgment of the Circuit Court of Cole County granting summary judgment in favor of Respondent McGowan & Co., Inc. d/b/a McGowan Excess & Casualty. The Judgment found that Knockerball could not establish the elements of damages and proximate cause against McGowan. According to the pleadings, Kockerball was a recreational sports business in Jefferson City. McGowan acted as an insurance broker and procured general liability insurance coverage for Knockerball through Atlantic Specialty Insurance Company. Roger Shockley was Knockerball's contact at McGowan for reporting any claims against Knockerball. On January 11, 2017, an injured person filed suit against Knockerball claiming that he was paralyzed as a result of an incident at Knockerball's premises. On December 28, 2016, Knockerball notified Shockley of Hart's potential claim. On January 23, 2017, Knockerball forwarded a copy of the Petition, which had been served that day, to Shockley. According to the pleadings, Shockley advised Knockerball there was no duty

to respond yet. Despite follow-up from Knockerball, and being contacted by the attorney for the injured person, it is alleged that Shockley failed to properly notify the insurance carrier. On March 31, 2017, the circuit court entered an interlocutory order of default against Knockerball. In January 2019 the injured person, Knockerball, and Knockerball's insurer entered into a settlement whereby Atlantic agreed to pay settlement claims. McGowan was not part of the agreement. The settlement agreement obligates Knockerball to pursue claims against others, including McGowan, and pay the remaining judgment with such proceeds. In the present action, Knockerball brought claims against McGowan for negligence, breach of fiduciary duty, breach of the duty of loyalty, and negligent failure to pay insurance. McGowan moved for, and was granted, summary judgment on the basis that Knockerball could not establish the elements of damages and proximate cause. This appeal follows.

Appellant's points on appeal:

1. The Trial Court erred in granting Respondent's Motion for Summary Judgment, because the Appellant did sustain damages, in that the Judgment against Appellant in the underlying case is damages even though Appellant limited the assets available to satisfy that Judgment through an agreement with Mr. Hart, the injured party, and further Respondent lacks standing to attempt to enforce or interpret the Agreement between Appellant and Mr. Hart, and Appellant and Mr. Hart had the freedom to contract to resolve the payment of the judgment as they saw fit.
2. The Trial Court erred in granting Respondent's Motion for Summary Judgment, because Respondent's conduct was the proximate cause of Appellant's damages, in that causation is generally an issue of fact for the jury to determine and further the evidence supports the Judgment (and Knockerball's other damages) was the natural and probable consequence of McGowan's actions in misleading Knockerball and/or inaction in failing to properly communicate with Knockerball's liability insurer, and therefore McGowan caused Knockerball's damages.