IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

TONDA HILL,

Appellant,

v.

STEVEN FREEDMAN,

Respondent.

DOCKET NUMBER WD82657
(Consolidated with WD82771)

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: May 19, 2020

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Jennifer M. Phillips, Judge

JUDGES

Division Four: Mitchell, C.J., and Newton and Ardini, JJ. CONCURRING.

ATTORNEYS

Edward (E.E.) Keenan and Sonal Bhatia, Kansas City, MO, Attorneys for Appellant.

Derek T. Teeter and Michael T. Raupp, Kansas City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TONDA HILL, Appellant,
v.
STEVEN FREEDMAN, Respondent.

WD82657 (Consolidated with WD82771) **Jackson County**

Before Division Four Judges: Karen King Mitchell, Chief Judge, and Thomas H. Newton and Edward R. Ardini, Jr., Judges

Tonda Hill appeals the dismissal, with prejudice, of her negligence claim arising from a work-related car accident involving her former supervisor, Steven Freedman. On appeal, Hill argues that the motion court erred in dismissing her claim because (1) Missouri law applies, in that the accident and resulting injuries occurred in Missouri; (2) Freedman is not immune from suit, in that the Kansas Tort Claims Act (KTCA) does not apply to a personal-capacity claim brought under Missouri law; (3) comity does not prohibit Hill's negligence claim, in that comity does not bar suits against government employees for their own personal acts; and (4) Hill's negligence claim is not barred by workers' compensation, in that this case is governed by Missouri law, there was an affirmative negligent act, and the suit claims remedies not obtainable under the workers' compensation system.

AFFIRMED.

Division Four holds:

1. We review the grant of a motion to dismiss *de novo* and affirm the dismissal on any meritorious ground stated in the motion.

2. A motion to dismiss for failure to state a claim on which relief can be granted is a test of the sufficiency of the plaintiff's petition.

3. When considering whether a petition fails to state a claim upon which relief can be granted, we accept all properly pleaded facts as true and construe all allegations in favor of the plaintiff.

4. We review the petition to determine if the facts alleged meet the elements of a recognized cause of action.

5. Missouri applies the law of the state where an injured employee accepts workers' compensation benefits, even where the employee is injured in Missouri. Thus, Hill's

decision to pursue workers' compensation benefits under Kansas law means that issues related to her injury are governed by Kansas law.

6. Hill is statutorily barred from asserting a negligence claim against Freedman because the Kansas Workers Compensation Act contains an exclusive remedy provision, which precludes an employee who recovers benefits for an on-the-job injury from an employer under the Act from maintaining a civil action for damages against the employer or a fellow employee.

7. Freedman is immune from Hill's negligence claim under the KTCA, which provides that a governmental employee acting within the scope of his employment is not liable for damages resulting from any claim by a governmental employee arising from the tortious conduct of another employee of the same governmental entity, if the claim is compensable under the Kansas Workers Compensation Act.

8. Because Hill's negligence claim is governed by Kansas law and the Kansas Workers Compensation Act and the KTCA preclude Hill from suing Freedman for negligence under the circumstances of this case, Hill fails to state a claim for negligence against Freedman.

Opinion by: Karen King Mitchell, Chief Judge May 19, 2020

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.