MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BRENDA ESTES, AS GUARDIAN AND NEXT FRIEND FOR JANE DOE

APPELLANT,

v.

THE BOARD OF TRUSTEES OF THE MISSOURI PUBLIC ENTITY RISK MANAGEMENT FUND IN THEIR OFFICIAL CAPACITIES, ET AL.

RESPONDENTS.

DOCKET NUMBER WD83764

DATE: March 16, 2021

Appeal From:

Buchanan County Circuit Court
The Honorable Kate H. Schaefer, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick, Judge and Mark D. Pfeiffer, Judge

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Attorneys:

Kirk R. Presley, Kansas City, MO, for appellant.

Michael G. Berry, Jefferson City, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BRENDA ESTES, AS GUARDIAN AND NEXT FRIEND FOR JANE DOE, APPELLANT,

v.

THE BOARD OF TRUSTEES OF THE MISSOURI PUBLIC ENTITY RISK MANAGEMENT FUND IN THEIR OFFICIAL CAPACITIES, ET AL., RESPONDENTS.

WD83764 Buchanan County

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick, Judge, and Mark D. Pfeiffer, Judge

Brenda Estes, as next friend for Jane Doe, appeals from the trial court's grant of summary judgment in favor of the Missouri Public Entity Risk Management Fund ("MOPERM") and the individual members of its board of trustees in their official capacities on Estes's claims for bad faith failure to settle within policy limits and breach of fiduciary duty following an assignment of rights from MOPERM's insured, Alberta Hughes. Estes argues that the trial court committed legal error in concluding that MOPERM has sovereign immunity from claims of bad faith failure to settle within policy limits and breach of fiduciary duty. Estes also argues that the trial court's Judgment cannot be affirmed on any of the other bases urged in MOPERM's motion for summary judgment.

REVERSED AND REMANDED.

Division Four holds:

1) MOPERM is not a "public entity" for purposes of sovereign immunity protection under section 537.600.1, RSMo, because it does not perform a service traditionally performed by the government, and because it is not controlled by and directly answerable to public officials, public entities, or the public. The trial court erred in concluding that MOPERM was entitled to sovereign immunity on Estes's claims.

2) MOPERM is a liability insurer and owes its insureds a duty to act in good faith to attempt to settle within policy limits.

3) MOPERM's enabling legislation does not prohibit claims made directly against MOPERM.

4) MOPERM's enabling legislation does not preclude Estes's claims on the basis that they exceed the amount MOPERM is authorized to pay for all claims arising out of a single occurrence because Estes's current claims arose out of a different occurrence than the underlying lawsuit.

Opinion by: Cynthia L. Martin, Judge March 16, 2021

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