MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JAMES MALONEY AND HADLEY MALONEY

APPELLANTS,

v.

BENCHMARK INSURANCE COMPANY

RESPONDENT.

DOCKET NUMBER WD83411

DATE: April 27, 2021

Appeal From:

Cass County Circuit Court
The Honorable William B. Collins, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick, Judge and Anthony Rex Gabbert, Judge

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Attorneys:

Mark T. Kempton and Samuel R. Kempton, Sedalia, MO, for appellants.

Mark B. Schaffer, Overland Park, KS, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JAMES MALONEY AND HADLEY MALONEY, APPELLANTS,
v.
BENCHMARK INSURANCE COMPANY, RESPONDENT.

WD83411 Cass County

Before Division Four: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick, Judge and Anthony Rex Gabbert, Judge

James and Hadley Maloney appeal from a judgment entered in favor of Benchmark Insurance Company following a jury trial on Plaintiffs' claim of bad faith failure to settle within insurance policy limits. Plaintiffs allege that the trial court committed legal error in denying their motion for new trial because Benchmark's counsel engaged in intentional misconduct by repeatedly violating the trial court's pretrial rulings on motions in limine, including asking the jury to draw an improper adverse inference about a witness's absence during closing argument.

AFFIRMED.

Division Four holds:

The trial court did not err in denying Plaintiffs' motion for new trial due to Benchmark's counsel's repeated misconduct in violating the trial court's pretrial rulings, including suggesting an adverse inference from a witness's absence during closing argument, because Plaintiffs were afforded all relief requested during trial and never requested a mistrial, and because the trial court did not abuse its discretion by concluding that counsel's misconduct did not prejudicially impact the outcome of the trial.

Opinion by Cynthia L. Martin, Judge April 27, 2021

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