MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MELISSA BOTTORFF-AREY, ON HER OWN BEHALF, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF, AND AS PARENT OF ALEXANDER DAVID MULLINS, DECEASED, AND SUZANNE AND MICHAEL THOMAS, ON THEIR OWN BEHALF, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF, AND AS, PARENTS OF JOSHUA MICHAEL THOMAS, DECEASED,

Appellants,

v.

TRUMAN STATE UNIVERSITY; THE FRATERNITY OF ALPHA KAPPA LAMBDA, INC.; BRANDON GROSSHEIM; ALPHA KAPPA LAMBDA, XI CHAPTER; LOU ANN GILCHRIST; AND TRUMAN STATE UNIVERSITY CAMPUS SECURITY AUTHORITIES,

Respondents.

DOCKET NUMBER WD84006

Date: September 21, 2021

Appeal from:

Adair County Circuit Court
The Honorable Russell E. Steele, Judge

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Alok Ahuja, and Anthony Rex Gabbert, Judges

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Attorneys:
Nicole Gorovsky; Sarah Schwartz, St. Louis for appellants.
Jeffrey Blaylock, Jill Jackson, Theodore Lindsey, John Benson, for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

MELISSA BOTTORFF-AREY, ON HER OWN BEHALF, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF, AND AS PARENT OF ALEXANDER DAVID MULLINS, DECEASED, AND SUZANNE AND MICHAEL THOMAS, ON THEIR OWN BEHALF, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF, AND AS PARENTS OF JOSHUA MICHAEL THOMAS, DECEASED, Appellants,

v.

TRUMAN STATE UNIVERSITY; THE FRATERNITY OF ALPHA KAPPA LAMBDA, INC.; BRANDON GROSSHEIM; ALPHA KAPPA LAMBDA, XI CHAPTER; LOU ANN GILCHRIST; AND TRUMAN STATE UNIVERSITY CAMPUS SECURITY AUTHORITIES, Respondents.

WD84006 Adair County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, Alok Ahuja, and Anthony Rex Gabbert, Judges

Melissa Bottorff-Arey, on her own behalf and as personal representative of the estate of, and as parent of, Alexander David Mullins, deceased, and Suzanne and Michael Thomas, on their own behalf and as personal representatives of the estate of, and as parents of, Joshua Michael Thomas, deceased (collectively, "Appellants"), appeal the circuit court's judgment dismissing their claims against Truman State University ("Truman") and Lou Ann Gilchrist, vice-president of student affairs at Truman. Appellants contend their petition stated valid Missouri Merchandising Practices Act ("MMPA") and breach of contract claims against Truman and that their claims against Truman and Gilchrist were not barred by sovereign immunity.

AFFIRMED.

Division One holds:

(1) The circuit court did not err in dismissing Appellants' MMPA claim against Truman on the basis that Truman is not a "person" subject to liability under the MMPA. The MMPA does not expressly or impliedly indicate that it applies to public corporations such as Truman.

(2) The circuit court did not err in dismissing Appellants' breach of contract claim against Truman or their negligence claim against Gilchrist. In both claims, Appellants attempted to improperly assert violations of the Clery Act, which expressly states that there is no private cause of action against institutions for noncompliance with its provisions and that evidence of compliance or noncompliance with its provisions is not admissible in any court proceeding outside of an enforcement action.

Opinion by: Lisa White Hardwick, Judge September 21, 2021

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