

**Missouri Court of Appeals, Western District
Special Division**

**Cynthia L. Martin, Presiding Judge
W. Douglas Thomson, Judge
Joseph M. Ellis, Special Judge**

**April 10, 2025
Truman State University
Kirksville, Missouri**

WD86862

Pedro Carrillo, Respondent,

v.

Missouri Department of Corrections, Appellant.

Appellant Missouri Department of Corrections (“Department”) appeals the judgment of the Circuit Court of Jackson County finding in favor of Respondent Pedro Carrillo on his claims for disability discrimination and hostile work environment. As alleged at trial, Carrillo began working for the Department as a corrections officer in 2014. In 2017, Carrillo became the acting corrections training officer/fire and safety officer at the Kansas City Reentry Center. Carrillo served in this position for 355 days. Carrillo claimed that he was denied compensation for his time in the position because policy had not been followed in appointing him and he had not been qualified for the role. Carrillo interviewed for the same position in 2017 and 2018 but was found to be unqualified. Carrillo interviewed again in December 2018. Before this interview, Carrillo provided additional information about his qualifications. Carrillo was found to be qualified for the position, but, on February 3, 2019, before a hiring decision was made, Carrillo submitted his resignation. Carrillo alleged that, prior to his resignation, he was told he would not be promoted. The Department claimed that, immediately following his resignation, Carrillo was contacted at home, offered the position, and given an opportunity to rescind his resignation. Carrillo declined. In addition to the issues faced in promotion, Carrillo alleged that he was subject to discrimination by other employees at the Kansas City Reentry Center. Carrillo had a pacemaker. Because of his pacemaker, Carrillo was not required to pass through the metal detectors upon entering the prison and was, instead, subject to a pat search and “wanded.” Another employee, D.P., allegedly made racial comments and slurs about Carrillo when the two entered the building together. Carrillo reported D.P.’s behavior to his superior, S.C. Carrillo also believed S.C. made harassing comments, and Carrillo reported S.C.’s comments to the warden. Carrillo eventually filed a charge of discrimination with the Missouri Commission on Human Rights, followed by the underlying suit. Following a jury trial, the jury found in favor of Carrillo on his disability discrimination and hostile work environment claims. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in denying the Department judgment notwithstanding the verdict on Carrillo's disability discrimination claim because Carrillo failed to present a submissible case of disability discrimination in that no evidence showed a tangible adverse action affecting a term, condition, or privilege of Carrillo's employment.
2. The trial court erred in submitting subparagraphs 2 and 3 of Paragraph Third of Instruction No. 11, the verdict director for Carrillo's disability discrimination claim, because those subparagraphs constituted improper duplication that violated Rule 70.02, in that Instruction No. 11 misdirected, misled, or confused the jury, resulting in prejudice to the Department, where the hostile work environment verdict director (Instruction No. 13) submitted the same verbal harassment as Paragraph Third of Instruction No. 11.
3. The trial court erred in submitting subparagraphs 2 and 3 of Paragraph Third of Instruction No. 11, the verdict director for Carrillo's disability discrimination claim, because Instruction No. 11 misstated the law, resulting in prejudice to the Department, in that Instruction No. 11 misdirected or misled the jury by submitting in subparagraphs 2 and 3 of Paragraph Third verbal comments that were not adverse employment actions.

WD87357

Frank Wolfe and Karen Wolfe, Appellants,

v.

Courtney Allyson Walker, M.D., et al., Respondents.

Appellants Frank and Karen Wolfe appeal the judgment of the Circuit Court of Cole County granting summary judgment to Respondents Dr. Walker and SSM Regional Health Services on the Wolfes' claims for medical negligence. The sole issue on appeal is whether the Wolfes' claims are barred by a two-year statute of limitations. As alleged by the parties, Dr. Walker, a cardio-thoracic surgeon employed by SSM Regional Health Center, performed open heart surgery on Frank Wolfe on February 8, 2019. In their petition, the Wolfes allege that Frank Wolfe's sternum failed to heal post-surgically. He was seen by Dr. Walker for a follow-up appointment on March 13, 2019. On July 26, 2019, the Wolfes went to Dr. Walker's office without an appointment and spoke with a nurse. Frank Wolfe indicated he had chest wall pain and swelling after pulling the starter cord on his lawn mower. Mr. Wolfe was sent home without seeing Dr. Walker. The nurse consulted with Dr. Walker, and it was determined that if Mr. Wolfe did not improve within three weeks she would order additional imaging. On August 7, 2019, Dr. Walker ordered a CT scan without contrast to see if there was an issue with Frank Wolfe's sternum. According to Dr. Walker, the scan showed the sternum unchanged and that he did not have mediastinitis in his chest. On August 17, 2019, Frank Wolfe went to

the Emergency Room at the University of Missouri Hospital where he was diagnosed with anterior mediastinitis with abscess, osteomyelitis, and acute MSSA bacteremia. The Wolfes filed a petition alleging negligent post-operative care of Frank Wolfe. Respondents filed a motion to dismiss alleging that all claims of negligence occurred before July 16, 2019, more than two years before the petition was filed. As such, Respondents argued that the claims were barred by the statute of limitations. The Wolfes opposed Respondents' motion claiming that a common law continuing care doctrine tolled the commencement of the statute of limitations on claims of negligence. The circuit court granted the motion to dismiss. On July 18, 2024, the Wolfes voluntarily dismissed remaining claims. This appeal followed.

Appellants' points on appeal:

1. The trial court erred in granting partial summary judgment to Defendants on the contested issue of the continuing care exception because continuing care provided by Defendant Walker, and through her employer SSM Regional Health Services, tolled commencement of the limitations period such that Plaintiffs' Petition was filed less than two years before that period expired in that: **A.** Defendant Walker performed a coronary artery bypass graft surgery upon Plaintiff Frank Wolfe on February 8, 2019; **B.** Dr. Walker saw Mr. Wolfe in her office on March 13, 2019, following the coronary artery bypass grafting surgery and again made note of the separated sternum; **C.** Dr. Walker's office note of March 3 (sic, 13,) 2019, does not indicate she was releasing Mr. Wolfe from her care but that she ordered him to continue current medications, discussed his wound care, ordered him to increase his activities as tolerated, and she would contact cardiac rehabilitation; **D.** Dr. Walker left surgical repair on the nonunion of Mr. Wolfe's sternum as an open option for discussion later; **E.** Plaintiffs' petition was filed July 16, 2021; **F.** On July 26, 2019, Dr. Walker states that Mr. Wolfe needed to allow time for his chest swelling to improve, but if no improvement in three weeks she would consider additional imaging such as a CT to reevaluate his sternal nonunion. In the meantime, she recommended ibuprofen for the discomfort and swelling; **G.** On July 26, 2019, Plaintiff presented to Dr. Walker's office reporting chest pain and swelling, and Dr. Walker's nurse took a history, performed an examination, and consulted Dr. Walker who gave recommendations; **H.** On August 7, 2019, Dr. Walker ordered a CT without contrast after Mr. Wolfe reported continued chest pain; **I.** A CT with contrast of Mr. Wolfe's chest on August 7, 2019, was required to ascertain possible evidence of an infection or an infectious process and to evaluate the ongoing sternal separation; **J.** The CT of August 7, 2019, showed continued separation of the sternum; and **K.** Dr. Walker provided continuing medical care to Mr. Wolfe for his sternal dehiscence when she ordered him to undergo a chest CT without contrast on August 7, 2019, and later reviewed the results of that CT.

2. The trial court erred in granting partial summary judgment to Defendants on the contested issue of the continuing care exception because Defendants did not set forth any material/elemental facts in their Statement of Uncontroverted Material Facts (SUMF) and therefore partial summary judgment cannot flow as a matter of law from the Rule 74.04(c) numbered paragraphs and responses in that: Defendants' Fact 9, upon which the trial court found no genuine issue of material fact as to the issue of continuing care, states only the evidentiary fact "as of March 13, 2019, Mr. Wolfe did not have any additional appointments scheduled with Dr. Walker, Dr. Walker told him he did not need to return to see her, and Mr. Wolfe was released from surgical care;" Plaintiffs' response to Defendants' Fact 9 asserted Defendant Walker provided additional treatment to Mr. Wolfe after the March 13, 2019, date stated above when she ordered and reviewed a CT scan of Mr. Wolfe's chest on August 7, 2019, to evaluate his sternal separation; No other fact set forth in Defendants' SUMF set out an uncontested material fact which established the right to summary judgment on the issue of continuing care as a matter of law, especially when considering Plaintiffs' responses to said facts; and Plaintiffs' Additional Material Facts 1 through 10 and Defendants' Responses demonstrate a dispute as to the material facts on the existence and duration of the continuing care exception.

3. The trial court erred in granting partial summary judgment to Defendants on the contested issue of the continuing care exception because the facts, responses, evidence, and reasonable inferences from the facts and evidence, which must be viewed in favor of Plaintiffs as non-movants, do not support Defendants' right to partial summary judgment as a matter of law and required the trial court to resolve contested facts in favor of Defendants to grant said motion in that: The trial court found there to be no continuing care by Dr. Walker when the doctor had no plans for future treatment of the Plaintiff, and Plaintiff had no plans to return for subsequent treatment; Even though the patient in fact did return for further treatment of his sternal dehiscence/nonunion; And even though Dr. Walker did provide continuing care for the sternal nonunion in the form of ordering a CT scan, making and communicating her diagnosis of the patient's condition based upon that CT scan, making a determination of whether additional surgical intervention was required at that time, prescribing ibuprofen, and communicating her doctor's future prognosis of the patient's symptoms.

WD87059

**Daniel Anderson, Jimmy Draeger and Brenda Draeger, Valorie Gunther,
Respondents,**

v.

Monsanto Company, Appellant.

Appellant Monsanto Company appeals from the judgment of the Circuit Court of Cole County awarding Respondents damages following a jury trial on Respondents' allegations that they were injured by Monsanto's product, Roundup. Respondents filed separate lawsuits in California, Missouri, and New York alleging that Monsanto was responsible for injuries allegedly caused by their exposure to Roundup. The Respondents, or their spouse, suffer from non-Hodgkin lymphoma. The cases were consolidated and submitted to the jury on theories of strict liability-design defect, strict liability-failure to warn, and negligence. The jury found in favor of the Respondents, awarding \$61 million in compensatory damages and \$1.5 billion in punitive damages. Following a motion for remittitur, the court ordered that the punitive damages be reduced to \$549.9 million. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in permitting Respondents to introduce expert testimony about a legal decision from the Ninth Circuit, because judicial opinions and expert testimony about them are plainly inadmissible in Missouri, in that testimony on this subject misled and confused the jury and usurped the trial court's role.
2. The trial court erred in permitting Respondents to offer opinions from Dr. M. on "intensity-weighted lifetime days" because those opinions constituted improper surprise in that they were not disclosed by Respondents and were expressly disclaimed by Dr. M. before trial.
3. The trial court erred in permitting Respondents to introduce evidence of the "billed" amounts of their medical expenses, because the relevant law permits Respondents to recover only for amounts actually "paid," in that the jury's awards of compensatory damages were dramatically inflated by millions of dollars based on these impermissible "billed" amounts.
4. The trial court erred in denying Monsanto's post-trial motions to eliminate or, at a minimum, to significantly reduce the punitive damages awarded, because those awards are unconstitutionally duplicative of each other and of past punitive awards in the Roundup litigation in that they improperly punish Monsanto cumulatively for the same underlying conduct.

5. The trial court erred in denying Monsanto’s post-trial motions to eliminate or, at a minimum, to significantly reduce the punitive damages awarded, because those awards violate Monsanto’s due process rights in that they impose a grossly excessive penalty out of line with the evidence presented in this case.
6. The trial court erred in denying Monsanto’s post-trial motion for credits under section 510.263.4, RSMo, because that statute requires courts to credit punitive damage awards in this state with amounts previously paid in any state or federal court arising out of the same conduct in that Monsanto has already paid nearly \$100 million in punitive damages for the same conduct at issue here.
7. The trial court erred in denying Monsanto’s motion for summary judgment and motion for judgment notwithstanding the verdict because Respondents’ claims should not have been presented to the jury in that the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) expressly and impliedly preempts those claims.

WD87304

RFJ Auto Properties, LLC, Respondent,

v.

Knipp Real Estate, LLC, Knipp Real Estate II, LLC, Respondents; Fletcher Automotive No. 28, LLC, Appellant; and Corwin Imports of Jefferson City III, Respondent.

Appellant Fletcher Auto, LLC (“Fletcher”) appeals the judgment of the Circuit Court of Cole County granting summary judgment in favor of Respondent RFJ Auto Properties, LLC (“RFJ”). As alleged in the pleadings, the dispute involves property owned by a Trust (“Landlord”) leased to Fletcher for use as an automotive dealership. Fletcher entered into a sublease with Corwin Imports. Corwin Imports, in turn, subleased the property to RFJ. Landlord, Fletcher, Corwin Imports, and RFJ all entered into an assumption agreement in which RFJ assumed and agreed to perform all of the duties imposed by the lease and subleases. A disagreement arose between the parties as to whether the lease terminated on August 31, 2021, or was extended through December 31, 2022. RFJ paid rent through August 31, 2021, and filed a petition for declaratory judgment seeking a declaration that its obligations under the lease terminated on August 31, 2021. Fletcher responded that the lease term was extended until December 31, 2022, and filed counterclaims alleging breach of contract and anticipatory repudiation. Fletcher also brought a crossclaim against Corwin Imports for the same, and against Timothy Corwin, individually, for breach of guaranty. Landlord also answered RFJ’s petition filing counterclaims, crossclaims, and a third-party claim against RFJ, Fletcher, Corwin Imports, and Corwin, maintaining the lease and subleases remained in

effect until December 31, 2022. Corwin Imports also then responded with various counterclaims against RFJ and declaratory judgment regarding the termination of the lease. On multiple motions for summary judgment, the circuit court determined that the lease ended on August 31, 2021. Although not all crossclaims and counterclaims were resolved, the circuit court certified the judgment for immediate appeal pursuant to Rule 74.01(b). This appeal followed.

Appellant's points on appeal:

1. The trial court erred in granting Summary Judgment in favor of RFJ because the Lease documents and uncontested facts demonstrated that the Commercial Lease, as amended, expired by its terms not sooner than December 31, 2022, in that no uncontroverted facts were presented to the court to establish a Commercial Lease expiration date occurring before December 31, 2022.
2. The trial court erred in denying Fletcher's Motion for Partial Summary Judgment because the Lease documents and uncontested facts demonstrated that the Commercial Lease, as amended, expired by its terms on December 31, 2022, in that no uncontroverted facts were presented to the Court to establish a Commercial Lease expiration date occurring December 31, 2022.
3. The trial court erred in granting Summary Judgment in favor of RFJ because there were controverted facts as to the expiration of the Commercial Lease, as amended, in that the Summary Judgment record does not contain undisputed material facts establishing a lease termination date of August 31, 2021.