

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| LEE RICHARDSON, as Wife of STANFORD) | No. ED91995 |
| RICHARDSON, SR., Deceased, Appellant,) | |
|) | |
| vs.) | Appeal from the Circuit Court of |
|) | the City of St. Louis |
| CITY OF ST. LOUIS and BRYAN) | |
| BURROW, Respondents.) | |
|) | Filed: September 22, 2009 |

OPINION SUMMARY

Lee Richardson (“Plaintiff”), widow of the decedent, Stanford Richardson, Sr., appeals from the judgment entered by the Circuit Court of the City of St. Louis, dismissing her wrongful death claim against the City of St. Louis and City-employed emergency medical technician (“EMT”), Bryan Burrow (collectively “Defendants”) on the grounds that Defendants were entitled to sovereign immunity and official immunity, respectively.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED

Division One Holds: The trial court did not err in granting the motion to dismiss for the City on the basis of sovereign immunity because: (1) Plaintiff was required to plead facts in her petition giving rise to an exception to sovereign immunity; and (2) she failed to plead facts establishing that the City’s operation of its Bureau of Emergency Medical Services was a proprietary function. The trial court erred in granting the motion to dismiss with respect to Mr. Burrow on the basis of official immunity because: (1) official immunity is an affirmative defense and dismissal is proper only if the defense is clearly established on the face of the petition; and (2) although EMT’s are not precluded from official immunity solely because they provide medical treatment to patients, Plaintiff’s petition does not establish on its face that Mr. Burrow was engaged in a discretionary act when treating Plaintiff’s husband.

Opinion by: Patricia L. Cohen, J. Kurt S. Odenwald, P.J. and Glenn A. Norton, J., concur.

Attorney for Appellant: Mark T. McCloskey

Attorney for Respondents: Patricia Hageman

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