

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

HORIZON MEMORIAL GROUP, LLC AND  
BAILEY & COX FAMILY FUNERAL SERVICE, LLC, Appellants

v.

MARK H. BAILEY; Defendant

MEMORIAL PARK CEMETERY ASSOCIATION OF MO.

HENRY W. DEVRY, III. Respondents

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DOCKET NUMBER WD68755

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: January 27, 2009

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**Appeal From:**

Circuit Court of Buchanan County, MO  
The Honorable Randall R. Jackson, Judge

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**Appellate Judges:**

Division One: Ronald R. Holliger, P.J., Lisa White Hardwick, and James Edward Welsh, JJ.

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**Attorneys:**

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Co-Counsel for Appellants

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**Attorneys:**

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Counsel for Respondents  
Co-Counsel for Respondents

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**HORIZON MEMORIAL GROUP, LLC AND BAILEY & COX FAMILY FUNERAL SERVICE, LLC, Appellants, v. MARK H. BAILEY, Defendant; MEMORIAL PARK CEMETERY ASSOCIATION OF MO. HENRY W. DEVRY, III, Respondents**

**WD68755**

**Buchanan County**

Before Division One Judges: Holliger, P.J., Hardwick, and Welsh, JJ.

Horizon Memorial Group, L.L.C. (Horizon) and Bailey & Cox Family Funeral Services, L.L.C. (Bailey & Cox) sued Mark Bailey for breach of their non-compete agreement and sued Memorial Park Cemetery Association of Missouri (Memorial Park) and Henry W. DeVry, III (DeVry) for tortious interference of the agreement. The jury found for Horizon and Bailey & Cox on both claims. The jury awarded them \$439,273 in compensatory damages and \$100,000 in punitive damages on their tortious interference claim, and the circuit court granted them an injunction prohibiting Mark Bailey from working for Memorial Park. Memorial Park and DeVry filed a motion for a judgment notwithstanding the verdict (JNOV) on Horizon's and Bailey & Cox's punitive damage claim. Memorial Park and DeVry also requested that the circuit court reduce Horizon's and Bailey & Cox's damage award for tortious interference because the circuit court's injunction and the circuit court's relieving Horizon and Bailey & Cox of paying the balance of a promissory note to Bailey cured them of their damages. The circuit court granted the motion and entered a judgment reducing Horizon's and Bailey & Cox's compensatory damages to \$90,774 and eliminating the punitive damage award. On appeal, Horizon and Bailey & Cox raise eight points asserting that the circuit court erred in entering a JNOV on their punitive damage claim and reducing their compensatory damages to \$90,774.

**AFFIRMED IN PART, REVERSED IN PART.**

**Division One holds:**

We agree that the circuit court erred in entering Memorial Park's and DeVry's motion for JNOV on Horizon's and Bailey & Cox's punitive damage claim. We also agree that the circuit court erred in reducing Horizon's and Bailey & Cox's compensatory damage award by \$268,499 on the basis that its grant of an injunction cured their damages. We find, however, that the circuit court was correct to reduce Horizon's and Bailey & Cox's compensatory damages by \$80,000 and affirm that part of the judgment.

**Opinion by: James Edward Welsh, J.**

January 27, 2009

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