

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PHONG TRAN,**

**Appellant,**

**v.**

**DAVE'S ELECTRIC COMPANY,**

**Respondent.**

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DOCKET NUMBER WD71183

**Date: November 15, 2011**

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Appeal from:  
Cass County Circuit Court  
The Honorable Jacqueline A. Cook, Judge

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Appellate Judges:  
Division One: Mark D. Pfeiffer, Presiding Judge, Thomas H. Newton and Alok Ahuja, Judges

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Attorneys:  
Edward D. Robertson, Jr. and Mary D. Winter, Jefferson City, MO, and Brendan C. Buckley and James T. Thompson, Kansas City, MO, for appellant.

William J. Foland, Jr. and Cory L. Atkins, Kansas City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

PHONG TRAN

**Appellant,**

v.

DAVE'S ELECTRIC COMPANY,

**Respondent.**

WD71183

Cass County

Appellant Phong Tran was injured in a car accident with Laura Hale on Missouri Highway 291 in Cass County on January 27, 2004. Tran was injured in the accident. He filed suit against both Ms. Hale and Respondent Dave's Electric Company. At the time, Ms. Hale was the President and sole Director of the Company.

It was undisputed that at the time of the accident Ms. Hale was driving into the office from her home to meet with an auditor from the Company's workers compensation insurance carrier. It was also undisputed that, but for the workers compensation audit appointment, Ms. Hale would normally have worked from home on that day due to the inclement weather. Finally, the undisputed evidence establishes that Ms. Hale was unable to reschedule or cancel the auditor appointment on the morning of January 27, 2004, that she was the only Company employee in a position to meet with the auditor, and that she made the trip into the office because it was important to the Company's interests that the auditor not be abandoned at the Company's office.

At trial, the jury returned a verdict finding Ms. Hale personally liable, and awarding Tran \$1.4 million in compensatory damages for his injuries. The jury found in the Company's favor, however, on Tran's vicarious liability claim. Tran filed a motion for judgment notwithstanding the verdict ("JNOV"), claiming that the trial court had erred in submitting the *respondeat superior* issue to the jury. The trial court denied Tran's motion. This appeal follows.

**REVERSED.**

Division One Holds:

Generally, a plaintiff bearing the burden of proof is not entitled to a directed verdict, or a JNOV after trial, because the jury is entitled to disbelieve the plaintiff's evidence even if that evidence is not specifically controverted. The plaintiff is entitled to a directed verdict or JNOV, however, in the unusual situation where the defendant has admitted in its pleadings, by counsel, or through the defendant's testimony the basic facts of the plaintiff's case.

As a general rule an employer is not liable for injuries caused by an employee while the employee is traveling between home and work (the “going and coming” rule). An exception exists, however, if the employee is on a “special errand” for the employer at the time of the injury-causing accident.

In this case, the Company’s current President, whose testimony constitutes admissions binding on the Company, admitted all of the facts necessary to establish that Ms. Hale was on a “special errand” for the Company at the time of the accident, and that the Company is therefore vicariously liable for the injuries she negligently caused. The Company’s President testified that Ms. Hale was required to make a specific journey, at a specific time and to a specific place, under potentially dangerous conditions, based solely on the needs of the Company, and as the sole available means of furthering the Company’s interests. Undertaking the trip was contrary to Ms. Hale’s own personal concerns regarding the weather and the condition of the roads, and was unnecessary to her personal interest in maintaining her employment.

While Ms. Hale was traveling to her regular workplace on a regularly scheduled workday, this does not defeat application of the “special errand” rule, because the evidence indicates that she would not have traveled to her regular workplace *on the day of the accident* but for the Company’s specific, time-sensitive needs.

Because the undisputed testimony of the Company’s representatives establishes that Ms. Hale was on a “special errand” and that the Company was vicariously liable for the injuries she caused, the trial court erred by denying Tran’s motion for a JNOV against the Company.

Before: Division One: Mark D. Pfeiffer, Presiding Judge, and Thomas H. Newton and Alok Ahuja, Judges

Opinion by: Alok Ahuja, Judge

**November 15, 2011**

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