

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**EMILY BAKER,**

**Respondent.**

**v.**

**DEPARTMENT OF MENTAL HEALTH FOR THE STATE OF MISSOURI,**

**Appellant,**

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DOCKET NUMBER WD72018

**Date: April 26, 2011**

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Appeal from:  
Saline County Circuit Court  
The Honorable Dennis A. Rolf, Judge

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Appellate Judges:  
Division Three: Alok Ahuja, P.J., Victor C. Howard and Cynthia L. Martin, J.J.

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Attorneys:  
Geoffery E. Willmoth, Kansas City, MO, for appellant.  
Jonathan D. McQuilkin, Columbia, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

**EMILY BAKER,**

**Respondent,**

**v.**

**DEPARTMENT OF MENTAL HEALTH FOR THE STATE OF MISSOURI,**

**Appellant.**

WD72018

Saline County

**Before Division Three: Alok Ahuja, P.J., Victor C. Howard and Cynthia Martin, JJ.**

Emily Baker worked at a Department of Mental Health (“DMH”) facility as a client attendant trainee providing care to consumers. K.T. was a consumer suffering from numerous communicative and mental disorders. On February 10, 2007, K.T. had a tantrum in which she knocked her medication and juice out of an employee’s hands, and threw herself onto the floor. K.T. kicked and screamed, and refused to get up. Employees often used water as a less invasive means of controlling K.T.’s outbursts. Consequently, as the tantrum escalated, Baker retrieved a half-full pitcher of water and poured it onto K.T. while another employee held K.T.’s wrists and straddled her. Baker then refilled the pitcher, and a co-worker threatened to pour more water on K.T. if she did not cooperate. K.T.’s behavior subsided.

In a later incident on the same day, Baker witnessed another co-worker refer to a different consumer (M.A.) as “you bitch” after M.A. pinched or hit Baker’s co-worker.

DMH charged Baker with physical abuse of K.T., and for Class II neglect for failure to report the verbal abuse of M.A. After the charges were substantiated, Baker was terminated as a probationary employee, and her name was placed on the DMH’s employee disqualification list. An administrative law judge affirmed the findings of physical abuse and Class II neglect on administrative appeal. Baker then sought judicial review, and the circuit court reversed DMH’s decision on both grounds. DMH appeals.

**CIRCUIT COURT JUDGMENT AFFIRMED.**

Division Three Holds:

In order to constitute “physical abuse,” Baker’s conduct must have involved “mistreating or maltreating [K.T.] in a brutal or inhumane manner.” 9 C.S.R. 10-5.200.1(F) (2008). Prior caselaw has held that “brutal” refers to “grossly ruthless or unfeeling” actions, while conduct is

“inhumane” if it is “lacking pity, kindness or mercy; savage.” Prior cases have found conduct not to be “brutal or inhumane” where the employee acted reflexively, and where the conduct did not cause injury and was not done roughly.

Baker’s actions do not qualify as “brutal or inhumane” under these standards. Her actions were taken in response to K.T.’s outburst, which presented a risk of injury to K.T. or others. Baker’s actions caused K.T. no injuries. Moreover, Baker apparently did not act out of frustration with or anger towards K.T., but instead consistent with an existing practice employed to control K.T.’s behavior. Baker’s conduct may well have been inappropriate, but the record does not support the conclusion that Baker’s actions were “brutal or inhumane” within the meaning of 9 C.S.R. 10-5.200.1(F) (2008), because they were not “grossly ruthless,” “unfeeling,” or “lacking pity, kindness or mercy,” as required by prior Missouri cases.

With respect to the Class II neglect charge, the record reflects that the co-worker who referred to consumer M.A. as “you bitch” did so only after being scratched, pinched, or hit by M.A. Baker’s failure to report another employee’s isolated, reflexive use of the word “bitch,” out of frustration and in response to the consumer’s pinch, scratch, or hit, does not rise to the level of a “failure [by Baker] to provide reasonable or necessary services to a consumer,” as required to constitute class II neglect under 9 CSR 10-5.200.1(B) (2008).

Opinion by: Alok Ahuja, Judge

April 26, 2011

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