

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DALE E. LEWIS,

Appellant-Respondent,

v.

MARY BIEGEL,

Respondent-Appellant.

DOCKET NUMBER WD72049 Consolidated with WD72088

Date: February 21, 2012

Appeal from:
Linn County Circuit Court
The Honorable Gary E. Ravens, Judge

Appellate Judges:
Division Four: Lisa White Hardwick, Chief Judge, Presiding, Mark D. Pfeiffer,
Judge and Robert M. Schieber, Special Judge

Attorneys:
John H. Norton, Kansas City, MO, for appellant.
Wade H. Ford, Columbia, MO, Thomas M. Ward and Russell F. Watters, St. Louis,
MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

DALE E. LEWIS

Appellant-Respondent,

v.

MARY BIEGEL,

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Linn County

Before Division Four: Lisa White Hardwick, Chief Judge, Presiding,
Mark D. Pfeiffer, Judge and Robert M. Schieber, Special Judge

Following a jury trial, Mary Biegel appeals the judgment entered in favor of Dale Lewis on his negligence claim for personal injuries resulting from a 1998 elevator accident. Mrs. Biegel contends the circuit court erred in denying her motions for directed verdict and post-trial motions because Mr. Lewis did not make a submissible case on his claim that Mrs. Biegel's husband (who is now deceased) was negligent in failing to report a 1997 elevator accident. Specifically, she argues that the negligence claim was barred by the landlord immunity doctrine and the statute of limitations, and that it was unsupported by substantial evidence. Mr. Lewis cross-appeals the denial of his alternative negligence claim.

AFFIRMED.

Division Four holds: Mrs. Biegel waived the landlord immunity and statute of limitations defenses by failing to raise them prior to submission of the case. The negligence claim wasmissible because Mr. Lewis presented evidence to establish that Mrs. Biegel's husband knew about the 1997 elevator accident, failed to report it, and thereby prevented correction of the defects that caused Mr. Lewis' injuries in the 1998 accident. The judgment on the "failure to report" claim is affirmed. Because Mr. Lewis has prevailed, his cross-appeal of the defense verdict on his alternative negligence claim is denied.

Opinion by: Lisa White Hardwick, Chief Judge

February 21, 2012

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