

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

PATRICIA IVEY

Appellant

v.

CLARA JOE NICHOLSON-MCBRIDE

Respondent

DOCKET NUMBER **WD72070**

DATE: February 22, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Peggy Stevens McGraw, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Joshua P. Perkins, Kansas City, MO
John H. Norton, Kansas City, MO

Counsel for Appellant
Co-Counsel for Appellant

Attorneys:

Bernard T. Schmitt, Kansas City, MO
Angela D. Lucas, Kansas City, MO

Counsel for Respondent
Co-Counsel for Respondent

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

PATRICIA IVEY, Appellant, v.
CLARA JOE NICHOLSON-MCBRIDE, Respondent

WD72070

Jackson County

Before Division One Judges: Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Ms. Patricia Ivey, a driver's license examiner, was injured while administering a driving skills test to Ms. Clara Jo Nicholson-McBride, a license applicant. Ms. Nicholson-McBride had stopped abruptly at an intersection with a red traffic light. Ms. Ivey had extended her hand to brace herself, and the impact injured her shoulder. Ms. Ivey brought a negligence claim against Ms. Nicholson-McBride. Ms. Nicholson-McBride moved for summary judgment, alleging that Ms. Ivey impliedly assumed the risks of injuries from abrupt stops made by license applicants. The circuit court granted summary judgment for Ms. Nicholson-McBride. Ms. Ivey appeals.

REVERSED AND REMANDED.

Division One holds:

Ms. Ivey raises three points on appeal, but we address only the first because it is dispositive. In her first point, Ms. Ivey argues that summary judgment was improper because the law imputes a duty of care upon drivers to their passengers, thereby rendering the assumption of risk doctrine inapplicable.

Under the doctrine of implied primary assumption of risk, a plaintiff is precluded from suing a defendant for injuries caused by a risk that the plaintiff assumes by entering into the relationship with the defendant. These risks are reasonably foreseeable consequences of participating in the activity. They do not arise from a defendant's negligence.

The law imposes a duty on all drivers to operate their vehicle with the highest degree of care. Since the law does not exempt operators who are unlicensed drivers, Ms. Nicholson-McBride had this duty. Ms. Ivey had no reason to foresee that Ms. Nicholson-McBride would breach this duty during a driving skills test; Ms. Ivey did not assume the risks caused by negligence by virtue of her position as a license examiner. Consequently, the assumption of risk doctrine is inapplicable to this case. It is simply an issue of negligence.

Because Ms. Ivey alleged Ms. Nicholson-McBride's negligence in operating the vehicle and that disputed issue is central to the case, the circuit court erred in granting summary judgment. Thus, we reverse the summary judgment and remand the case for proceedings consistent with the opinion.

Opinion by: Thomas H. Newton, Judge

February 22, 2011

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