

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DAVID L. BIERSMITH**

**APPELLANT,**

**v.  
CURRY ASSOCIATION  
MANAGEMENT, INC.**

**RESPONDENT.**

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DOCKET NUMBER WD73231

DATE: October 25, 2011

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Appeal From:

Jackson County Circuit Court  
The Honorable Sandra C. Midkiff, Judge

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Appellate Judges:

Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Cynthia L. Martin,  
Judges

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Attorneys:

David L. Biersmith, Appellant Pro Se

Rodney J. Hoffman, Kansas City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DAVID L. BIERSMITH,**

**APPELLANT,**

**v.**

**CURRY ASSOCIATION  
MANAGEMENT, INC.,**

**RESPONDENT.**

No. WD73231

Jackson County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and  
Cynthia L. Martin, Judges

David Biersmith appeals from the trial court's judgment granting summary judgment in favor of Curry Association Management, Inc., on Biersmith's claim of negligent infliction of emotional distress. Biersmith acknowledges that the trial court entered judgment in accordance with Missouri law. However, Biersmith claims that Missouri law is contrary to an evolving trend in other states which do not require documentation of emotional distress and that, as a result, Missouri law effectively forecloses relief to a significant class of individuals who suffer acute, yet fleeting, injuries in the nature of shock which can be difficult to document.

**AFFIRMED AND REMANDED WITH INSTRUCTIONS.**

**Division Two holds:**

(1) In Missouri, where the plaintiff is a direct victim of the defendant's negligence and seeks damages for emotional distress, the plaintiff is required to demonstrate: (a) that the defendant should have realized that his conduct involved an unreasonable risk of causing the distress and (b) the emotional distress or mental injury is medically diagnosable and of sufficient severity as to be medically significant.

(2) In Missouri, it is not necessary, as suggested by Biersmith, that a plaintiff claiming negligent infliction of emotional distress prove a contemporaneous traumatic physical injury.

(3) Decades old decisions from other jurisdictions cited by Biersmith for the alleged proposition that a theory of *per se* liability can support a claim for negligent infliction of emotional distress even in the absence of evidence of medically diagnosable and significant psychological injuries do not constitute an "evolving trend" which warrant disregard of established law in Missouri.

(4) The purpose of Rule 84.19 is to prevent congestion of appellate dockets with unmeritorious cases and to compensate respondents for the time and cost of responding to a

futile appeal. Biersmith's appeal is frivolous under Rule 84.19, warranting an award of attorney's fees to Curry Association Management.

**Opinion by: Cynthia L. Martin, Judge**

October 25, 2011

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