

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PATRICIA HANSEN**

**APPELLANT,**

**v.  
RANDY RITTER AND RANDY  
SNYDER**

**RESPONDENTS.**

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DOCKET NUMBER WD74115

DATE: June 29, 2012

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Appeal From:

Pettis County Circuit Court  
The Honorable Robert L. Koffman, Judge

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Appellate Judges:

Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin, Judge and  
Kenneth Garrett, Special Judge

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Attorneys:

John E. Turner and Christopher P. Sweeny, Kansas City, MO and J. Kirk Rahm, Warrensburg,  
MO, for appellant.

Kelly A. Campbell and Lindsay Todd Perkins, Kansas City, MO and Stanley B. Cox, Sedalia,  
MO, for respondents.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PATRICIA HANSEN,**

**APPELLANT,**

**v.**

**RANDY RITTER AND RANDY  
SNYDER,**

**RESPONDENTS.**

No. WD74115

Pettis County

Before Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin, Judge and Kenneth Garrett, Special Judge

Patricia Hansen appeals from the trial court's dismissal of her wrongful death petition. The petition asserted a common law claim of negligence against two co-employees of Hansen's son who was killed in a workplace accident. The petition alleged that the co-employees owed her son the duty to provide a safe workplace. The trial court dismissed the petition without prejudice for failure to state a cause of action.

**AFFIRMED.**

**Division Four holds:**

The Workers' Compensation Act expressly allows injured employees to pursue civil remedies "available at common law or otherwise" against parties not covered by the Act. As noted in *Robinson v. Hooker*, 323 S.W.3d 418 (Mo. App. W.D. 2010), strict construction of the 2005 amendment to the Act requires the conclusion that the term "employers" is not defined to include employees within its scope. Thus, injured employees may pursue civil remedies available at common law or otherwise against their co-employees.

An injured employee who brings a common-law negligence action against a co-employee must establish the existence of a duty on the part of the defendant to protect plaintiff from injury, failure of the defendant to perform that duty and, that plaintiff's injury was proximately caused by defendant's failure. The existence of duty is a question of law to be decided by the court.

The duties Hansen ascribes to her son's co-employees are subsumed within the employer's non-delegable duty to provide a safe workplace. While the employer may assign the responsibility of performing its non-delegable duties to employees, the employer is not discharged from liability if an employee negligently performs the assigned duty.

Under common law, however, the employer's non-delegable duties are not duties owed by co-employees to each other. Early common law characterized a co-employee's negligent performance of an employer's non-delegable duties as "nonfeasance," or the failure to perform a

duty owed to the principal by virtue of the relationship existing between the co-employee and his employer. In time, the nonfeasance label was replaced by a focus on whether a co-employee owed a personal duty of care independent of the master/servant relationship. In either case, at common law, there has always been a recognized distinction between a breach of the employer's duty to provide a safe workplace, which cannot result in a co-employee's liability to an injured co-worker, and a breach of a personal duty of care, which can result in a co-employee's liability to an injured co-worker.

Hansen's wrongful death petition asserts only that co-employees owed her son a duty to perform the employer's non-delegable duty to provide a safe workplace. This is not a personal duty of care owed by the co-employees independent of the employer/employee relationship, and thus is not a legal duty sufficient to support a cause of action for negligence in acting or failing to act in breach of said duty.

The trial court properly dismissed Hansen's petition because the duty to provide a safe workplace is a non-delegable duty of the employer which co-employees do not owe to fellow employees.

Opinion by Cynthia L. Martin, Judge

June 29, 2012

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