

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

GAIL AND DARRELL MANSFIELD

RESPONDENTS,

v.

CALEB HORNER AND JOHN HORNER

APPELLANTS.

DOCKET NUMBER WD76310

DATE: June 17, 2014

Appeal From:

Jackson County Circuit Court
The Honorable Marco A. Roldan, Judge

Appellate Judges:

Division Three: Mark D. Pfeiffer, Presiding Judge, Thomas H. Newton, Judge and Cynthia L. Martin, Judge

Attorneys:

Daniel A. Thomas and Jonathan M. Soper, Independence, MO, for respondents.

Michael T. Moulder and Andrew J. Goodwin, Kansas City, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

GAIL AND DARRELL MANSFIELD,

RESPONDENTS,

v.

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APPELLANTS.

No. WD76310

Jackson County

Before Division Three: Mark D. Pfeiffer, Presiding Judge, Thomas H. Newton, Judge and Cynthia L. Martin, Judge

Caleb Horner and John Horner appeal from the trial court's judgment in a wrongful death action awarding \$8,650,000 of compensatory damages and \$100,000,000 in damages for aggravating circumstances to Gail Mansfield and Darrell Mansfield.

AFFIRMED

Division Three holds:

(1) Any question regarding submissibility is not preserved for appeal because the Horners failed to move for a directed verdict at the close of all the evidence. Further, the Horners' argument, while couched in terms of submissibility, is in fact a complaint that the jury should have accepted their affirmative defense that Misty assumed the risk of having an unassisted home birth and refusing medical treatment. The trial court may not give a directed verdict or enter a judgment notwithstanding the verdict in favor of the party having the burden of proof.

(2) The Horners failed to demonstrate that the jury's verdict was a product of bias and prejudice so that the trial court did not abuse its discretion in denying the Horners' motion for new trial.

(3) Having considered the aggravating circumstance award under the framework of *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003) for reviewing whether the award passes constitutional muster, the jury's verdict was not grossly excessive, especially in light of the reprehensibility of the Horners' actions.

(4) Any question regarding whether the wrongful death suit required the jury to adjudicate the merits of religious beliefs is not preserved for appeal because the Horners failed to move for directed verdict at the close of all the evidence. Further, the trial court did not commit plain error in overruling the Horners' motion for judgment notwithstanding the verdict because the jury instructions required the jury to determine whether the Horners' actions constituted negligence, and not the merits of the Horners' religious beliefs.

(5) Whether Wendi Nield's testimony was improperly excluded at trial is unpreserved for appeal because the Horners never attempted to introduce Nield as a witness and never made an offer of proof regarding Nield's testimony.

(6) Karen Tadych's testimony was both logically and legally relevant so that the trial court did not abuse its discretion in admitting the testimony.

(7) The Horners' blanket challenge to the admission of "certain" evidence did not identify the specific rulings of which the Horners complained and preserved nothing for appellate review. Ex gratia, the categories of evidence discussed in the argument portion of the Horners' brief were not erroneously admitted.

(8) A closing argument that compared the Horners to notorious religious leaders, that referred to the Mansfields' counsel expecting a baby, and that suggested the jury put the Horners "out of business" did not result in manifest injustice or a miscarriage of justice warranting plain error review.

(9) Section 510.265 caps awards of "punitive damages" at the greater of \$500,000 or five times the net amount of the judgment awarded to the plaintiff against the defendant. Section 510.263.7 defines a "punitive damage award" for purposes of section 510.263 to include awards of punitive damages and awards for aggravating circumstances in wrongful death cases. The definition does not apply by its terms to section 510.265. The definition is nonetheless instructive as it demonstrates that the Legislature knows how to express its intent to include aggravating circumstance damages within the scope of a statutory reference to punitive damages if it intends to do so. The statutory cap on "punitive damages" found in section 510.265 is not applicable to "aggravating circumstance" awards under the wrongful death statute.

Opinion by Cynthia L. Martin, Judge

June 17, 2014

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