

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

MAY & MAY TRUCKING, L.L.C.

Appellant

v.

PROGRESSIVE NORTHWESTERN INSURANCE COMPANY

Respondent

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DOCKET NUMBER WD76488

DATE: May 13, 2014

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Daniel Richard Green, Judge

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Appellate Judges:

Division Three  
Anthony R. Gabbert, P.J., Victor C. Howard, and Thomas H. Newton, JJ.

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Attorneys:

William Nacy, Jefferson City, MO

Counsel for Appellant

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Attorneys:

Brette Hart, Leawood, KS

Counsel for Respondent

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

May & May Trucking, L.L.C., Appellant, v. Progressive Northwestern Insurance Company,  
Respondent

**WD76488**

**Cole County**

Before Division Three Judges: Gabbert, P.J., Howard, and Newton, JJ.

May & May filed a lawsuit against Progressive for breach of contract. May & May claimed that Progressive failed to pay damages for a dump truck, the insured vehicle. May & May asked for additional damages because Progressive's refusal to pay was vexatious. May & May reported to Progressive that the dump truck had been stolen. Progressive denied the claim, although the dump truck was insured under a valid policy. Instead, Progressive investigated the loss for fraud. Additionally, it refused to honor the recently increased policy limit. After the investigation, Progressive started the process to compensate May & May. However, the increased policy limit was still being denied. During negotiations, May & May reported to Progressive that the dump truck had been found. Progressive determined that the dump truck was salvageable. Progressive paid for some repairs but not all repairs. May & May demanded additional compensation for damages and loss.

Progressive filed a motion for summary judgment. Progressive claimed that there was no merit to the breach of contract claim because it had paid for repairs. It also claimed that no evidence showed that it had acted vexatiously. May & May responded, denying some of the uncontroverted facts and adding related facts from attached affidavits that disputed Progressive's facts. The trial court granted Progressive summary judgment. May & May appeals.

**REVERSED AND REMANDED.**

**Division Three Holds:**

May & May raises three points. We find the first point dispositive, and thus, do not address the other points. In that point, May & May argues that the circuit court erred in considering a certain affidavit to enter summary judgment because it was not based on personal knowledge and referred to hearsay. We agree.

The affidavit did not declare that the affiant had personal knowledge. The statements show that the affiant did not have personal knowledge of the facts stated in the affidavit. The affiant's role at Progressive did not support an implied personal knowledge of the facts. The affidavit was hearsay. Because the affidavit was hearsay, the circuit court erred in relying on it. Absent the affidavit, the summary judgment cannot stand.

Therefore, we reverse and remand.

Opinion by Thomas H. Newton, Judge

May 13, 2014

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