

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

GATEWAY TAXI MANAGEMENT,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD76886

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 29, 2014

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Division One: Pfeiffer, P.J., and Hardwick and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Brian E. McGovern and Bryan M. Kaemmerer, Chesterfield, MO

William E. Quirk, Kansas City, MO

Attorneys for Appellant,

Chris Miller, Jefferson City, MO

Attorney for Respondent,

Wilbur Tomlinson, St. Louis, MO

Attorney for Amicus Curiae St. Louis
Convention & Visitors Commission,

Mary L. Bruntrager and Neil J. Bruntrager, St. Louis, MO

Attorneys for Amicus Curiae Metropolitan
St. Louis Taxicab Commission,

Christopher P. Leritz, St. Louis, MO
Arthur L. Herold, Washington, D.C.

Attorneys for Amicus Curiae Taxicab,
Limousine & Paratransit Association.



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

GATEWAY TAXI MANAGEMENT,)
)
Appellant,)
v.)
DIVISION OF EMPLOYMENT)
SECURITY,)
Respondent.)

**OPINION FILED:
July 29, 2014**

WD76886

Labor and Industrial Relations Commission

Before Division One Judges: Mark D. Pfeiffer, Presiding Judge, and Lisa White Hardwick and Karen King Mitchell, Judges

Gateway Taxi Management d/b/a Laclede Cab Company (Laclede) appeals the Missouri Labor and Industrial Relations Commission’s decision that taxicab drivers “performed services for wages in employment” for Laclede. Laclede raises two points on appeal. In its first point, it contends that the Commission erred in applying the section 288.034.5 RSMo presumption to conclude that Laclede employed taxicab drivers and that fares paid by customers to drivers were subject to unemployment taxation because section 288.090.2 RSMo expressly limits the imposition of unemployment taxation to wages paid by employers, and the overwhelming weight of the evidence does not support the conclusion that Laclede paid drivers anything, much less wages, in that the undisputed testimony established that the funds at issue were paid to drivers by taxicab customers, not by Laclede.

In its second point, Laclede contends that the Commission, in any event, erred in finding that the taxicab drivers are employees because the overwhelming weight of the evidence establishes that the drivers are independent contractors in that the factors weigh almost uniformly in favor of independent contractors, including particularly the facts that Laclede does not retain the right to control the manner and means by which drivers perform their jobs and does not exercise pervasive control exceeding to any significant degree the scope of control imposed by the Missouri legislature in the Metropolitan Taxicab Commission Vehicle for Hire Code (VHC).

REVERSED.

Division One holds:

Because we find that even if the presumption in the first sentence of section 288.034.5 applies in this case, the evidence established that the drivers were independent contractors, we reverse the Commission's determination based on Laclede's Point II and we do not address the argument raised by Laclede in its Point I.

While this is a very close case, we find that the drivers are independent contractors. To the extent that Laclede exerted "control" over the drivers, that "control" was mandated by the VHC. The control exerted by Laclede above and beyond that required by the VHC is not enough to indicate that an employer-employee relationship existed in this case.

Opinion by: Karen King Mitchell, Judge

July 29, 2014

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.