

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

COMPLETE TITLE OF CASE

PRISCELLA GILLEY,

Appellant,

v.

MISSOURI PUBLIC ENTITY RISK MANAGEMENT FUND,

Respondent.

DOCKET NUMBER WD76933

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: April 22, 2014

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Robert D. Schollmeyer, Judge

JUDGES

Division Three: Newton, P.J., and Pfeiffer and Martin, JJ.

CONCURRING.

ATTORNEYS

William P. Nancy
Jefferson City, MO

Attorney for Appellant,

Marshall V. Wilson and Michael G. Berry
Jefferson City, MO

Attorneys for Respondent.



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

PRISCELLA GILLEY,)
)
) **Appellant,**)
v.)
)
MISSOURI PUBLIC ENTITY RISK)
MANAGEMENT FUND,)
)
) **Respondent.**)

**OPINION FILED:
April 22, 2014**

WD76933

Cole County

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

Priscella Gilley (“Gilley”) appeals from the judgment of the Circuit Court of Cole County, Missouri (“trial court”), granting summary judgment in favor of the Missouri Public Entity Risk Management Fund (“MOPERM”) on Gilley’s equitable garnishment claim.

In her sole point on appeal, Gilley argues that the trial court erred in declaring and applying the law when it concluded, as a matter of law, that MOPERM funds were not available as liability insurance coverage to satisfy her tort judgment against a volunteer inmate “trustee” at the Cole County jail who, after delivering a meal to Gilley (also an inmate at the jail) in his volunteer inmate “trustee” capacity, raped her.

AFFIRMED.

Division Three holds:

Section 537.705.1(2) of the MOPERM statute permits coverage for tort claims against any *officer* or *employee* of a participating public entity to be limited either by the terms of the coverage offered by MOPERM or the coverage obtained by the covered public entity. Because section 537.705 neither requires nor prohibits coverage for a “*volunteer*,” to determine whether the judgment against the volunteer inmate “trustee” is covered by MOPERM, we look to the language within the Memorandum of Coverage. A “Covered Party” under the Memorandum of

Coverage included “[a]ny employee or **authorized volunteer** of the Member Agency **while acting within the course and scope of their duties.**” The volunteer inmate “trustee” was not “acting within the course and scope of [his] duties” when he raped Gilley; thus, the trial court correctly concluded that the volunteer inmate “trustee” was not covered by the MOPERM Memorandum of Coverage issued to Cole County.

Opinion by: Mark D. Pfeiffer, Judge

April 22, 2014

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