

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PAMELA RANDEL

**v.
CITY OF KANSAS CITY, MISSOURI**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD77211 Consolidated with WD77416

DATE: May 19, 2015

Appeal From:

Jackson County Circuit Court
The Honorable Robert M. Schieber, Judge

Appellate Judges:

Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer,
Special Judge

Attorneys:

Daniel A. Thomas, Jonathan M. Soper and Timothy J. Kingsbury, Independence, MO, for
respondent.

Tara M. Kelly, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

v.

CITY OF KANSAS CITY, MISSOURI,

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No. WD77211 Consolidated with WD77416

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Before Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

The City of Kansas City appeals from the trial court's judgment awarding Pamela Randel damages following a motorcycle accident on a state highway entrance ramp. Randel alleged that a hydraulic fluid spill from a Missouri Department of Transportation truck created a dangerous condition that the City failed to warn her about, proximately causing her injuries. The City argues that the trial court erred in denying its motion for directed verdict at the close of the evidence because it could not be bound by the actions of Kansas City Police Department officers as a matter of law, and because Randel failed to prove that the City owned or had exclusive control and possession of the roadway where Randel's accident occurred and thus failed to prove that the City waived sovereign immunity.

REVERSE AND ENTER JUDGMENT IN FAVOR OF THE CITY.

Special Division holds: Pursuant to section 537.600.1(2), RSMo, sovereign immunity is waived for injuries caused by the dangerous condition of a public entity's property. A public entity's property includes property owned by a public entity and property over which a public entity has exclusive control and possession. The Missouri State Highways and Transportation Commission is the owner of the highway entrance ramp where the dangerous condition which caused Randel's accident was located, and is constitutionally authorized and obligated to maintain the state highway system. Thus, Randel was required to establish that the City assumed exclusive control and possession over MHTC's property in order to establish that the City waived its sovereign immunity.

The evidence required to establish that a public entity has assumed exclusive control and possession over property owned by another requires more than proof of regulatory authority or opportunity to protect from injury. The evidence must establish an exercise of control and possession that is tantamount to ownership control.

Randel's evidence established only that Kansas City Police Department officers responded to the scene of the spill to control traffic, and told the MoDOT employees who caused the spill that they could leave. At best, Randel's evidence established that KCPD had the opportunity to regulate traffic in the area of the dangerous condition created by MoDOT, and thus the opportunity to warn Randel of the hazard that caused her accident. The evidence does not establish exclusive control and possession sufficient to waive sovereign immunity even presuming, without deciding, that the City was bound by the actions of Kansas City Police Department officers.

Opinion by Cynthia L. Martin, Judge

May 19, 2015

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