

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JAMES C. RHEA, INDIVIDUALLY  
AND AS PLAINTIFF AD LITEM  
FOR MARGARET RHEA, ET AL.**

**v.  
NORMAN SAPP**

**RESPONDENTS,**

**APPELLANT.**

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DOCKET NUMBER WD77301

DATE: March 3, 2015

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Appeal From:

Henry County Circuit Court  
The Honorable Michael C. Dawson, Judge

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Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Thomas H. Newton,  
Judge

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Attorneys:

Scott S. Bethune, David M. Harris and Travis W. Shumate, Kansas City, MO, for respondents.

Patricia Keck and Jill L. Geary, Springfield, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**JAMES C. RHEA, INDIVIDUALLY  
AND AS PLAINTIFF AD LITEM  
FOR MARGARET RHEA, ET AL.,**

**RESPONDENTS,**

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**APPELLANT.**

No. WD77301

Henry County

Before Division Three: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Thomas H. Newton, Judge

In this action for wrongful death, Norman Sapp, a firefighter, appeals from judgment entered in favor of the estate of Margaret Rhea. Sapp was dispatched to respond to a cattle trailer on fire on a two-lane highway after 9 p.m. at night. In the course of responding at a high rate of speed to the fire, Sapp lost control of his vehicle and struck Rhea's minivan, killing her. The proceedings below constituted a trial on the written record where some facts were stipulated, some facts were "uncontroverted" and other facts were presented by deposition and documentary evidence. The trial court entered judgment in favor of Rhea. Sapp raises two points on appeal, arguing that, as a firefighter, he should be shielded from liability and afforded the protections of either the official immunity doctrine or the public duty doctrine.

**REVERSED**

**Division Three holds:**

1) The facts establish that Sapp was responding to an emergency and was performing a discretionary act. The trial court thus erred in entering judgment in favor of Rhea because Sapp sufficiently established that he was entitled to the protection of official immunity.

2) Under these facts, our holding as to official immunity renders unnecessary a determination of whether the public duty doctrine applies.

Opinion by Gary D. Witt, Judge

March 3, 2015

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