

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

Matthew Daniels, et al.,)	September 16, 2009
)	
Plaintiffs,)	Cause No. 08SL-CC03265
vs.)	
)	Division 4
Lionmark, Inc., et al.,)	
)	
Defendants.)	

Order

The parties appeared by counsel on August 27, 2009 for argument on defendant Fred Weber, Inc.'s and defendants Shannon Hines Trucking LLC and Douglas Wilson's motions to reconsider. These motions were taken under submission. The court also heard additional argument on defendant Weber's motion to strike under Rule 55.27 (e), previously taken under submission.

Motion to Reconsider

Defendants Weber, Hines Trucking, and Wilson filed motions to reconsider the court's order of August 14, 2009 which denied defendants' motions to strike punitive damages. Counsel for defendants presented additional argument and authority.

Defendants moved to strike punitive damages, arguing that plaintiffs failed to separately plead facts to support their prayer for additional damages based on alleged aggravating circumstances. In the order of August 14, 2009, the court relied on *May v. Bradford*, 369 S.W.2d 225 (Mo. 1963), which holds that the rules requiring exemplary or punitive damages to be separately pleaded and asserted, have no application to proceedings under the Missouri wrongful death statute.

Defendants now rely on *Bennett v. Owens-Corning Fiberglas Corporation*, 896 S.W.2d 464 (Mo banc. 1995). *Bennett* recognized that aggravating circumstances are punitive in nature and that due process safeguards are required. *Bennett* held that due process is satisfied when the jury is given proper instructions to guide its deliberation regarding such damages. However, there is nothing in *Bennett* that modifies *May v. Bradford*, regarding the manner in which aggravating circumstances are to be pled in wrongful death cases. Accordingly, defendants' motions to reconsider are denied.

Motion to Strike Under Rule 55.27(e)

Defendant Weber's motion to strike addresses allegations in plaintiffs' First Amended Petition that defendant Wilson, as the driver of defendant Hines Trucking, was the statutory employee of Weber. Weber argues that this determination is immaterial to the issues of this case.

Plaintiffs are the minor children of Michael Daniels who died when the automobile he was operating collided with a truck owned by defendant Hines Trucking, operated by defendant Wilson. Plaintiffs allege that defendants Hines Trucking and Wilson were delivering asphalt for Weber at a construction site at Highway 30 near Highway 141. Plaintiffs' decedent was operating his auto on Highway 30 at the time of the collision. Plaintiffs contend that defendant Wilson was the statutory employee of Weber at the time of the collision.

The court believes the issue raised by Weber's motion to strike may be framed as follows: Assuming, *arguendo*, that Weber is the statutory employer of Wilson, that relationship is immaterial to plaintiffs' cause of action against Weber. Stated as a question: May a person not involved in the work being done on a construction project, but who is injured at a construction site he happens to come upon, avail himself of the statutory employer relationship in his lawsuit against the contractor/statutory employer?

Plaintiffs cite cases that discuss the statutory employer/employee relationship but none that address the issue raised by Weber's motion. The purpose of the statutory employer status is to prevent employers from avoiding Missouri Workers Compensation law simply by hiring independent contractors. If the requirements of the statute are met, the contractor is held to be the statutory employer even though it is not the actual employer, and Missouri Workers Compensation law applies. However, plaintiffs fail to cite any authority in support their contention that **they** are entitled to sue the contractor **as a statutory employer** in their action for wrongful death. Defendant Weber's motion to strike under Rule 55.27(e) is granted.

SO ORDERED:

Thomas J. Prebil
Judge, Division 4

cc: Attorneys of record