

**MISSOURI COURT OF APPEALS, WESTERN DISTRICT
DIVISION THREE**

**Mark D. Pfeiffer, Presiding Judge
Gary D. Witt, Judge
Thomas N. Chapman, Judge**

**November 7, 2024
University of Missouri Law School
Columbia, Missouri**

WD87167

Linda McCarty, Respondent,

v.

Shelter Mutual Insurance Company, Appellant.

Appellant Shelter Mutual Insurance Company (“Shelter”) appeals the judgment of the Circuit Court of Macon County granting summary judgment in favor of Respondent Linda McCarty. As alleged in the pleadings below, McCarty’s son was killed in a motor vehicle accident. McCarty made a claim against the at-fault driver and recovered the driver’s insurance policy limits of \$35,000. McCarty then made a claim against her own insurance provider, Shelter, under the underinsured motorist endorsement. The coverage was for \$50,000. Shelter offered to pay \$15,000 because it argued that it was entitled to a credit of \$35,000 for the funds McCarty received from the at-fault driver. Both parties moved for partial summary judgment on the question of the amount Shelter was required to pay under the policy. The circuit court entered judgment for McCarty finding that the policy was ambiguous and, as a result, Shelter was not entitled to credit for the \$35,000 payment. This appeal followed.

Appellant’s points on appeal:

1. The trial court erred in entering judgment as a matter of law for \$50,000, because Respondent is not entitled to the full \$50,000 Underinsured Motorist Coverage but instead is only entitled to \$15,000, in that Appellant is entitled to a credit from the \$50,000 policy limit for the tortfeasor’s insurer’s payment of \$35,000 to Respondent since the insurance policy unambiguously states that the tortfeasor’s insurer’s payment will reduce the Underinsured Motorist limit by that amount.
2. The trial court erred in overruling Appellant’s motion for summary judgment because Respondent is not entitled to the full \$50,000 Underinsured Motorist Coverage but instead is only entitled to \$15,000, in that Appellant is entitled to a credit from the \$50,000 policy limit for the tortfeasor’s insurer’s payment of \$35,000 to Respondent since the insurance policy unambiguously states that

the tortfeasor's insurer's payment will reduce the Underinsured Motorist limit by that amount.

WD86843

Missouri Highways and Transportation Commission, Respondent,

v.

Kenneth Zellers, Commissioner of Administration, Appellant.

Appellant Kenneth Zellers, Commissioner of Administration, appeals from the judgment of the Circuit Court of Cole County finding in favor of Respondent Missouri Highways and Transportation Commission ("Commission"). The Missouri General Assembly appropriates funds to the Commission and the Missouri Department of Transportation ("MoDot") annually. These appropriations direct the release of funds stored in the State Road Fund, established under Article IV, section 30(b)(1) of the Missouri Constitution. These funds are used for a variety of purposes, including paying the salary of MoDot employees. The Commission sought to give pay increases to its employees but appropriations for the increased salaries was not approved by the General Assembly. Although the General Assembly did not appropriate enough funding for a pay increase, the Commission believed there were sufficient funds in the State Road Fund to pay for the increase. The Missouri Office of Administration is the entity which oversees withdrawals from the State Treasury, including the State Road Fund. The Commission asked whether Kenneth Zellers, as Commissioner for the Office of Administration, would authorize payments from the State Road Fund, above the then-current legislative appropriation passed by the General Assembly, so that the Commission could increase salaries to MoDot employees. Zeller refused to authorize such payments in excess of General Assembly's appropriations. The Commission brought suit arguing that Article IV, section 30(b)(1), gives it plenary authority to expend funds from the State Road Fund for any purpose listed in that subsection. Further, the Commission argued that the Commissioner for Administration has no authority to refuse such payments so long as the payments are for an authorized purpose. The circuit court granted judgment on the pleadings in favor of the Commission. This appeal followed.

Appellant's point on appeal:

1. The trial court erred in concluding that Respondent's submission of requests for payments from the State Road Fund constitutes an "appropriation by law" necessary to withdraw money from the State Treasury, because Article IV, § 30(b)1 does not create a standing appropriation for the Missouri Highways and Transportation Commission to access and use funds in the State Road Fund for the specific purpose sought in this case without legislative appropriation, in that the language of the constitutional provision establishing the fund makes clear that the authority of a constitutional standing appropriation applies only

to the payment of principal and interest on any outstanding state road bonds and to maintain a balance necessary to meet payments of any principal and interest of state road bonds accruing in the next twelve months.

WD86708

Cristina Raybourn, Appellant,

v.

Changing Leads Equine Rescue, Respondent; Woodson Hill Equestrian Center, LLC, Respondent.

Appellant Cristina Raybourn appeals from the judgment of the Circuit Court of Platte County finding that Respondents Changing Leads Equine Rescue (“Changing Leads”) and Woodson Hill Equestrian Center, LLC, (“Woodson Hill”) were not liable for injuries Raybourn sustained while volunteering at Changing Leads. Changing Leads leases a barn and pasture land from Woodson Hill. Woodson Hill maintains separate facilities and a barn at the same address. Raybourn began volunteering for Changing Leads in June of 2019. As alleged in the pleadings, Raybourn was given no training on how to safely interact with the horses. On July 17, 2019, Raybourn signed a “Volunteer Liability Waiver.” Raybourn signed a second “Volunteer Liability Waiver” at a volunteer orientation meeting on August 24, 2019. On December 25, 2019, Raybourn was instructed to help walk a horse from the Changing Leads barn to the Woodson Hill barn without supervision. During the walk, the horse kicked Raybourn in the head causing serious injuries to her face and head. Following the accident, Raybourn brought suit against Changing Leads and Woodson Hill alleging negligence and premises liability. She also brought a claim against Changing Leads for misrepresentation. Both Changing Leads and Woodson Hill filed for summary judgment. The circuit court granted both summary judgment motions. This appeal followed.

Appellant’s points on appeal:

1. The trial court erred in granting summary judgment in favor of Defendants Changing Leads and Woodson Hill based on the alleged Volunteer Liability Waivers because those documents are not enforceable contracts that bar any of Raybourn’s claims as a matter of law in that they were not supported by consideration or, at a minimum, there are disputes of material fact on that question.
2. The court erred by refusing to vacate its summary judgment order in favor of Defendant Changing Leads, which was based on the alleged Volunteer Liability Waivers, because those documents are not enforceable contracts that bar any of Raybourn’s claims as a matter of law in that they were not supported by consideration or, at a minimum, there are disputes of material fact on that question.

3. The court erred in granting summary judgment in favor of Defendants Changing Leads and Woodson Hill by enforcing the waivers because there are material disputes of fact about whether the conduct at issue is covered by the waiver in that a jury could determine that Defendants' conduct was reckless or that Raybourn's actions fell outside the scope of the waiver itself.
4. The court erred in granting summary judgment in favor of Defendants Changing Leads and Woodson Hill based on their Equine Act defense because there are disputes of material fact as to whether the conduct at issue triggers the projections of the Act in that the jury could determine either that the Defendants' conduct enhanced the risk of harm to Raybourn or that Raybourn's activities are not covered by the Act.

WD86258

Miguel Torres, Appellant,

v.

State of Missouri, Respondent.

Appellant Miguel Torres appeals the decision of the Circuit Court of Livingston County denying his Rule 29.15 motion for post-conviction relief. In 2020, Torres was sentenced to a total of twenty years' imprisonment for three counts of felony delivery or possession of an unlawful item at a correctional center, one count of felony of damage to jail property, and one count of misdemeanor of making a false report. Evidence at trial showed that, in September 2018, Torres was detained at the Daviess-DeKalb Regional Jail. During that time, Torres informed jail officers that the detainees were making weapons out of a missing food tray. Evidence at trial, suggested Torres himself was responsible for the theft and weapons. The evidence included surveillance footage which appeared to show Torres hiding the missing food tray and crafting the tray or other objects into weapons. A jury found Torres guilty, and the convictions and sentence were affirmed on appeal. Torres filed an amended motion for post-conviction relief raising seven claims that his trial counsel was ineffective. Following an evidentiary hearing, the circuit court denied Torres' motion. This appeal followed.

Appellant's points on appeal:

1. The motion court clearly erred in denying Appellant's motion for post-conviction relief, pursuant to Rule 29.15, in violation of Appellant's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution because trial counsel was ineffective in failing to object to the term "blade" as used in the verdict-directing instruction, Instruction 5, for Count 1 and in failing to use a neutral term in the lesser-included offense instruction, Instruction 6. But for

trial counsel's deficient performance, there is a reasonable probability that the outcome of the trial would have been different.

2. The motion court clearly erred in denying Appellant's motion for post-conviction relief, pursuant to Rule 29.15, in violation of Appellant's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution because trial counsel was ineffective in failing to object to the term "knives" as used in the verdict-directing instruction, Instruction 7, for Count 2. But for trial counsel's deficient performance, there is a reasonable probability that the outcome of the trial would have been different.
3. The motion court clearly erred in denying Appellant's motion for post-conviction relief, pursuant to Rule 29.15, in violation of Appellant's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution because trial counsel was ineffective in failing to object to the term "garrote" as used in the verdict-directing instruction, Instruction 9, for Count 3. But for trial counsel's deficient performance, there is a reasonable probability that the outcome of the trial would have been different.
4. The motion court clearly erred in denying Appellant's motion for post-conviction relief, pursuant to Rule 29.15, in violation of Appellant's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution because trial counsel was ineffective in failing to offer a nested lesser-included offense instruction, under § 221.111.1(3), RSMo, for Count 3. Had trial counsel offered this instruction, it would have been accepted by the trial court, and there is a reasonable probability that Appellant would have been convicted of the lesser offense.
5. The motion court clearly erred in denying Appellant's motion for post-conviction relief, pursuant to Rule 29.15, in violation of Appellant's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution because trial counsel was ineffective in failing to object to the testimony of Officer James Baker on the grounds that this testimony was speculative and conclusory and thereby invaded the province of the jury. But for trial counsel's deficient performance, there is a reasonable probability that the outcome of the trial would have been different.