# Missouri Court of Appeals

Southern District

Division One

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| LARRY DWAYNE ORMSBY, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| vs. | ) | No. SD36576 |
| | ) | |
| CENTRAL MINE EQUIPMENT CO., | ) | FILED: November 30, 2020 |
| | ) | |
| Respondent. | ) | |

APPEAL FROM THE CIRCUIT COURT OF BUTLER COUNTY

Honorable Michael M. Pritchett, Judge

**AFFIRMED**

Having lost his personal-injury case, Dewayne Ormsby ("Plaintiff") charges error in admitting evidence allegedly irrelevant to his strict-liability theory. The evidence was relevant to Plaintiff's request for punitive damages when offered and admitted. We deny Plaintiff's points and affirm the judgment. *See* ***Lane v. Amsted Industries, Inc.***, 779 S.W.2d 754, 758-59 (Mo.App. 1989), discussed *infra*.

## Background

Our dispositional basis allows us to be brief. Plaintiff reached into a running CME 750 drill rig. An unguarded fan cut off his fingers and mangled his hand. This happened outside a mechanic shop that had repaired the rig's throttle cable. Plaintiff and a helper were picking up the rig and started the engine to check it. The engine started "revving." Plaintiff could not shut it off from the back of the rig.

As he later testified at trial, he told his helper "to go around and get up by the controls, which is where the driver is, and if I didn't get the motor stopped to kill it up there." Plaintiff then reached in and, in his words, "was attempting to maneuver the throttle linkage and governor to idle the engine down" when the injury occurred.[1]

The accident happened in 2013. Plaintiff's employer bought the used rig in 2001 from Respondent ("CME"), which in 1976 built and sold it to the U.S. Army Corps of Engineers based on the Corps' design specifications. The Corps inspected and accepted the rig per its quality-assurance procedures, used it for 25 years, then in 2001 traded it in for a $23,000 credit on a replacement. Without taking possession, CME sold the pre-owned unit for the same $23,000 trade-in price to Plaintiff's employer, who inspected it in Maryland, then bought and brought it to Poplar Bluff without CME seeing or handling it.

Plaintiff sued CME for strict liability and negligence, also seeking punitive damages under each theory. He dismissed his negligence count on the eve of trial. After jury selection, over CME's objection, Plaintiff amended his petition to focus only on the 2001 sale, seeking to render irrelevant CME's 1976 compliance with the Corps' design specifications.[2] After both parties rested, the court found Plaintiff had not made a submissible punitive-damage case, a ruling not challenged on appeal. Jurors found Plaintiff 100% at fault on his actual-damage claim, leading to the judgment from which Plaintiff now appeals, raising the evidentiary complaints previously noted.

**Standard of Review**

A trial court enjoys broad discretion in admitting or excluding evidence; we will not reverse unless that discretion is clearly abused by a ruling so illogical, unreasonable, arbitrary, and ill-considered that it shocks the sense of justice. *See* ***Lozano v. BNSF Ry. Co.***, 421 S.W.3d 448, 451 (Mo. banc 2014). If the ruling

[1] Plaintiff's helper did shut the rig down from the controls up front, but Plaintiff already had been hurt.

[2] As Plaintiff's counsel told the court: "If the Court grants us leave to amend to conform to the evidence … any contract specifications relating to Corps of Engineers' specifications has no relevancy to the sale in 2001 whatsoever."

can be upheld on any recognizable basis, we will do so. *See* ***Menschik v. Heartland Reg'l Med. Ctr.***, 531 S.W.3d 551, 557 (Mo.App. 2017).

**Analysis**

CME cogently argues several reasons to deny Plaintiff's evidentiary complaints, but we need cite only one: Plaintiff's punitive-damage request.

**Point 1 – Prior Sale to Corps of Engineers**

One sentence of Plaintiff's brief fairly summarizes his Point 1 arguments: "The admission of the evidence of the 1976 sale focused the jury's attention on whether the drill rig was defective when it was sold in 1976, an issue that has no bearing on the outcome of this case." This ignores the effect of Plaintiff's request for punitive damages.

"The element of knowledge, irrelevant to the basic strict liability product defect cause of action, is a required proof for punitive damages liability." ***Lane***, 779 S.W.2d at 758. "Compliance with industry standard and custom impinges to prove that the defendant acted with a nonculpable state of mind—without knowledge of a dangerous design defect—and hence to negate any inference of complete indifference or conscious disregard for the safety of others the proof of punitive damages entails." ***Id***. at 759. The same can be said for CME's compliance with the Corps' design specifications and the rig's apparent non-defective condition when sold.

Plaintiff made ***Lane***'s observations and CME's 1976 design-specifications compliance all the more relevant by kicking off his opening statement with this:

> Central Mining Equipment, the Defendant in this case, has a duty to design its drill rigs safely. No one disagrees with that. Its designers should follow the basic tenets of mechanical engineering design law or design principles to prevent accidents like the one that occurred with Mr. Ormsby.

Point 1 fails.[3]

**Point 2 – Absence of Similar Accidents**

In complaining about this evidence, Plaintiff disregards both his punitive-

[3] We need not consider the propriety of a limiting or withdrawal instruction, *see* ***Lane***, 779 S.W.2d at 759, because Plaintiff never requested one. ***Id***. at 759, 760.

damage claim and the trial court's express reference to it in overruling Plaintiff's trial objection. We quote defense counsel first for context, then skip ahead to the court's ruling and reasoning:

> [DEFENSE COUNSEL]: Secondly, this is all talking about the admissibility of absence of other incidents just the routine strict liability case. The difference here is that they won't let go of their punitive damage and the punitive damage claim goes to actual knowledge.
>
> * * *
>
> [THE COURT]: But I was looking in particular at the punitives because my understanding is that the actual knowledge – I looked up some cases. A case I was looking at said as the question of knowledge is pertinent to assessing the Defendant's alleged indifference or conscious disregard.
>
> So I think as long as punitives are in this case I think that the question is appropriate.

Plaintiff ignores the above, even after CME's brief cited this transcript excerpt, which dooms his point given ***Lane***'s above-cited observations. We presume the trial court ruled correctly and Plaintiff must show otherwise,[4] which rarely happens by refusing to address or even acknowledge a trial court's stated, considered, and appropriate reason for its ruling. Point denied. Judgment affirmed.

DANIEL E. SCOTT, J. – OPINION AUTHOR

NANCY STEFFEN RAHMEYER, P.J. – CONCURS

WILLIAM W. FRANCIS, JR., J. – CONCURS

[4] ***Cotner Productions, Inc. v. Snadon***, 990 S.W.2d 92, 100 (Mo.App. 1999).