

FILED

MAR 29 2023

JOAN M. GILMER
CIRCUIT CLERK, ST LOUIS COUNTY

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

TONYA MUSSKOPF, et al.,)	
)	
Plaintiffs,)	
)	Cause No. 22SL-CC02521
vs.)	
)	Division 4
MISSOURI HIGHWAYS AND)	
TRANSPORTATION COMMISSION, et al.,)	
)	
Defendants.)	

ORDER and JUDGMENT

On February 23, 2023, this cause was called for hearing on Defendant Missouri Highways and Transportation Commission’s (“MHTC”) Motion for Judgment on the Pleadings as to Counts I and IV of the Plaintiffs’ Second Amended Petition. Counsel for both parties appeared in person and the matter was heard and submitted.

Upon review of, among other things, the pleadings, motions, memoranda, caselaw and arguments of the parties, and following the standard of determining “whether the moving party is entitled to judgment as a matter of law on the face of the pleadings,” *see RGB2, Inc. v. Chestnut Plaza, Inc.*, 103 S.W.3d 420, 424 (Mo. Ct. App. S.D. 2003), and treating the well-pleaded facts of the petition as true for purposes of the motion, *see Messner v. Am. Union Ins. Co.*, 119 S.W.3d 642, 644 (Mo. App. App. 2003), the Court orders, adjudges, and decrees as follows:

1. Kaitlyn Anderson (“Anderson”) was an employee of the Missouri Department of Transportation on November 18, 2021, and died purportedly as a result of injuries she sustained from an accident while working in the course and scope of her employment. At the time, she was pregnant and carrying *in utero* a son, Jaxx Jarvis, who also died as a result of the accident.

2. Plaintiff Austin Jarvis, the father of Jaxx Jarvis and the boyfriend of Anderson, and Plaintiff Tonya Musskopf (“Musskopf”), who was the surviving mother of Anderson and surviving grandmother of Jaxx Jarvis, filed claims herein for the wrongful deaths of Anderson and Jaxx Jarvis against MHTC. Specifically, Count I of Plaintiffs’ Second Amended Petition alleges claims for the wrongful death of Jaxx Jarvis, and Count IV of the Petition alleges claims for the wrongful death of Kaitlyn Anderson.

3. For her part, Musskopf, as his grandmother, does not fall within the class of Plaintiffs entitled to pursue claims for the wrongful death of Jaxx Jarvis pursuant to MO. REV. STAT. § 537.080 (2017) in Count I. Moreover, her claim for the wrongful death of Anderson in Count IV is subject to Missouri’s exclusive remedy for compensation under the Missouri Workers’ Compensation Law pursuant to § 287.120. *See Page v. Clark Ref. & Mktg., Inc.*, 3 S.W.3d 385, 388 (Mo. Ct. App. 1999). Therefore, Musskopf’s claims for wrongful death are

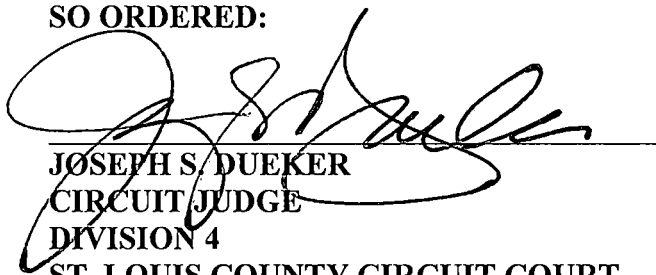
statutorily barred and the Court GRANTS MHTC's Motion for Judgment on the Pleadings as to her claims in Counts I and IV.

4. For his part, on the other hand, Austin Jarvis, as Jaxx Jarvis' father, falls within the class of Plaintiffs entitled to pursue claims for the wrongful death of his unborn son pursuant to MO. REV. STAT. § 537.080 in Count I. Moreover, under Missouri law, Jaxx Jarvis has independent claims for his injuries and death in his own right, so Austin Jarvis' claim for his wrongful death is not subject to Missouri's exclusive remedy for compensation under § 287.120. See MO. REV. STAT. § 1.205 (2017). Indeed, MHTC's statutory interpretation of the Workers' Compensation Law to exclude Jaxx Jarvis' claims here would lead to an extremely absurd result. See Reichert v. Bd. of Educ. of St. Louis, 217 S.W.3d 301, 305 (Mo. Banc 2007). To be sure, when reading the Workers' Compensation Law in the context of § 1.205, Jaxx Jarvis' independent claims as an unborn child are just as strong as if he was outside his mother's womb and next to her at the time of his death from the accident. Therefore, the Court DENIES MHTC's Motion for Judgment on the Pleadings as to Austin Jarvis' claim in Count I.

5. However, not only does Austin Jarvis lack standing to make a claim for the wrongful death of Anderson under § 537.080 in Count IV, his claim, like Muszkopf's claim, is subject to Missouri's exclusive remedy for compensation under § 287.120. Accordingly, Austin Jarvis' claim for Anderson's wrongful death is statutorily barred and the Court GRANTS MHTC's Motion as to his claim in Count IV.

Therefore, in light of the foregoing, among other bases including, but not limited to, the arguments as set forth in the parties' respective memoranda, the Court orders, adjudges, and decrees that MHTC's Motion for Judgment on the Pleadings as to Counts I and IV of the Plaintiffs' Second Amended Petition is GRANTED in part and DENIED in part in a manner consistent with this Order as set forth above.

SO ORDERED:


JOSEPH S. DUEKER
CIRCUIT JUDGE
DIVISION 4
ST. LOUIS COUNTY CIRCUIT COURT
CC: Attorneys of record

DATED: 3-29-23