

Kansas county-city settles over man's electrocution

By: Lawrence Viele Davidson Special to Missouri Lawyers Weekly August 13, 2015

The Unified Government of Wyandotte County and Kansas City, Kansas, agreed to pay \$1.65 million to the family of a man who was electrocuted in a public park in June 2013.

The government struck the deal June 25 in mediation rather than going to trial. The family of Nicholas Moeder sued the Unified Government in April 2014 for wrongful death after Moeder, 27, stepped on a downed high-voltage wire while playing disc golf around 3 a.m. in Rosedale Park.

The facts were not in contention as much as whether emergency responders and government personnel acted properly in the circumstances.

Moeder's death was due to "gross and wanton negligence," because the utility and emergency personnel failed to secure the wire or shut the off the power source after reports to 911 and the Bureau of Public Utilities, or BPU, that it was sparking, fiery and dancing, the plaintiffs said. The government claimed immunity under the Kansas Tort Claims Act.

Moeder's parents Wanda Christensen and Carl Moeder, who were divorced, sought \$4 million before trial, including \$4,800 for funeral expenses. Carl Moeder died of cancer before the case was resolved.

The Unified Government offered nothing before the mediation. Its employees did not act outside the scope of any policy or procedure, the government said in a motion for summary judgment. Puncturing the immunity defense requires that the employees are shown to have acted outside the rules.

The afternoon before Moeder and his friend set out to play disc golf at Rosedale Park, a severe storm hit the area, causing mass outages and downed wires. At least two calls were made about Rosedale Park, one to 911 and one to the BPU where the caller left a message according to the agency's voicemail instructions.

Once the emergency dispatcher who answered the call to 911 learned of the downed live wire, she called the BPU herself to make sure they knew, the plaintiffs said in a statement. But she didn't tell them about the caller's description of sparks and fire because she "believed that information was common knowledge," the Unified Government said in its summary judgment motion. She was in compliance with her employer's policies, the motion said.

No action was taken. Several BPU trucks were within five minutes of the park throughout the afternoon and evening of June 15, the day of the storm, plaintiff's attorney Andrew H. McCue of the Accurso Law Firm said in a written statement about the case. He and Louis C. Accurso of the Accurso Law Firm in Kansas City, represented the estate of Carl Moeder.

Moeder and his friend Stuart Rangel spent that night at a concert and then at a bar before going to the park, where a professional disc tournament was taking place in the daytime. Playing disc golf at night with glow-in-the-dark discs was a common activity at the park, the statement said.

Just as they were beginning to play, Moeder stepped on the live wire and died. Rangel attempted to rescue his friend and was shocked himself, the statement said. Rangel called 911 and within five minutes, police responded. The BPU cut the power to the line within 25 minutes, the statement said.

"The same dysfunctional government entities that could not collectively figure out that they should send even one unit to guard against a potential death, then managed to get the police on scene in less than 5 minutes," the statement said. "At least another 11 emergency responders showed up within 30 minutes of Stuart's 911 call. BPU's troubleshooter and lineman arrived within 16 minutes after BPU was first notified."

At the time of his death, Moeder was unemployed and living with his mother serving as the "man of the house," the statement said. He attended college for a time and planned to resume his studies in the fall of 2013.

M. Blake Heath represented Christensen. The lead defense attorneys for the government, John Aisenbrey of Stinson Leonard Street in Kansas City, did not return an email or voicemail message. Co-counsel Ashley Habiger of the same firm declined to comment on the case.

\$1.65 million settlement (out of state)

Type of Action: Wrongful death

Venue: Wyandotte County, Kansas, District Court

Case Number/Date: 14-CV396U/June 25, 2015

Judge: William P. Mahoney

Plaintiffs' Expert: John Ward, Prairie Village, Kansas (economics)

Last Pretrial Demand: \$4 million

Last Pretrial Offer: None

Caption: Wanda Christensen, Estate of Carl Moeder v. Unified Government of Wyandotte County and Kansas City, Kansas

Plaintiffs' Attorneys: Louis C. Accurso and Andrew H. McCue, Accurso Law Firm, Kansas City; M. Blake Heath, Kansas City

Defendant's Attorneys: John Aisenbrey and Ashley Habiger, Stinson Leonard Street, Kansas City

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