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# Vicarious Liability For Volunteers: Should Missouri Courts Consider New Standards?

*Woods v. Kelley*<sup>1</sup>

## I. INTRODUCTION

Modern tort law clearly requires employers to recognize and confront issues of vicarious liability for the negligence of their employees. Employers, however, may be more uncertain as to their exposure to liability for the negligence of their volunteers, as volunteers often decide the time, place, and manner in which they serve an organization.

Nonetheless, volunteers also receive suggestions, advice, or directions from those who oversee the organization's daily operations. Volunteers may also utilize the organization's materials and equipment and are sometimes reimbursed for materials they purchase for the organization. For purposes of vicarious liability, will these volunteers be categorized as independent contractors, employees of the organization, or something else?

*Woods v. Kelley* provides a prime opportunity to examine this issue in the context of a city's vicarious liability for the actions of a volunteer. The *Kelley* court discusses the circumstances under which a volunteer will be more like an independent contractor than a servant or employee. Although the court adopts no conclusive test for all volunteers, *Kelley* does provide guidance for future cases.

## II. FACTS AND HOLDING

On September 11, 1993, Max Woods was killed in an automobile collision in Grandview, Missouri.<sup>2</sup> His wife, Margie Woods, was injured in the same accident.<sup>3</sup> The driver of the other automobile involved in the accident, Catherine Kelley, had gone to a nursery to pick up some trees to plant at Shelton House,<sup>4</sup> an historic home owned by the City of Grandview.<sup>5</sup>

Kelley volunteered at Shelton House and served as a member of the Grandview Board of Aldermen.<sup>6</sup> Although the City of Grandview was aware of her volunteer efforts, Kelley often did not inform the city as to the nature of her

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1. 948 S.W.2d 634 (Mo Ct. App. 1997).

2. *Id.* at 635.

3. *Id.*

4. *Id.* at 636. However, Kelley was unable to pick up the trees because the nursery was closed. *Id.*

5. *Id.* at 635.

6. *Id.* at 636. Kelley's volunteer efforts included landscaping and maintenance services. *Id.*

services.<sup>7</sup> The City neither paid Kelley for her work nor expected her to perform work.<sup>8</sup> Nonetheless, the City occasionally reimbursed Kelley for her expenses, although she did not always submit expenses for reimbursement.<sup>9</sup> Kelley worked at Shelton House, independently of the city employees, without instruction or supervision.<sup>10</sup>

Max Woods' surviving children, Kimberly and Derek Woods, filed a wrongful death action against Kelley.<sup>11</sup> Mrs. Woods also filed a claim for personal injuries.<sup>12</sup> The plaintiffs eventually settled their claims against Kelley and dropped her from the lawsuit.<sup>13</sup> However, they amended their petition to include the City of Grandview as a defendant.<sup>14</sup>

In naming Grandview as a defendant, the plaintiffs asserted that Kelley was a "public employee" so as to invoke Missouri Revised Statute Section 537.600.1(1), which provides for waiver of sovereign immunity in certain circumstances.<sup>15</sup> The plaintiffs also pursued a common law negligence claim against the City under the doctrine of vicarious liability.<sup>16</sup> To establish the requisite "right to control" under both the statutory and common law claims, the plaintiffs argued that the City of Grandview clearly exercised and had the right to exercise ultimate control over Kelley's activities at Shelton House, specifically, those relating to maintenance and landscaping.<sup>17</sup> In support of their position, the Woods pointed to the City's ability to disapprove Kelley's expenditures, to refuse her volunteer services on a particular project, and to deny Kelley's services altogether.<sup>18</sup> The City of Grandview filed a motion for summary judgment and the Woods filed a motion for partial summary judgment.<sup>19</sup> The Circuit Court of Jackson County granted summary judgment in favor of the City of Grandview, holding that the undisputed facts established that Kelley was not a "public employee" under Section 537.600, and that the statute was the sole means by which plaintiffs could recover.<sup>20</sup>

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7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* Kelley also had her own key to the premises. *Id.*

11. *Id.* at 635.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 636-37. Missouri provides for sovereign immunity as existed at common law prior to September 12, 1977, except in cases of "[i]njuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment." MO. REV. STAT. § 537.600.1(1) (1994).

16. *Woods v. Kelley*, 948 S.W.2d 634, 637 (Mo Ct. App. 1997).

17. *Id.*

18. *Id.*

19. *Id.* at 635.

20. *Id.* at 636.

The Missouri Court of Appeals for the Western District affirmed the decision of the lower court.<sup>21</sup> The court held that a volunteer is not a public employee when the city does not control the method, manner, or means of the volunteer's services.<sup>22</sup> Furthermore, the court held that a city cannot be held liable for actions of a volunteer under common law theories of negligence, even with a statute waiving sovereign immunity, when the volunteer is not a public employee because such a volunteer cannot operate within the course or scope of employment or agency.<sup>23</sup>

### III. LEGAL BACKGROUND

Missouri Revised Statute Section 537.600 reveals that the doctrine of sovereign immunity remains in "full force and effect" in Missouri, shielding the sovereign from liability for negligent acts of its employees.<sup>24</sup> However, to soften the harsh effects of the doctrine, Section 537.600.1 provides for an absolute waiver of immunity for injuries borne out of the operation of motor or motorized vehicles by "public employees."<sup>25</sup> To determine whether a volunteer fits within the definition of a public employee, Missouri applies the traditional common law doctrine of vicarious liability.<sup>26</sup>

#### A. Vicarious Liability for Employees

Missouri courts have traditionally applied the widely adopted "control approach" to determine whether the relationship of master-servant exists.<sup>27</sup> This approach examines whether the alleged master had the right to control the physical conduct of the other person.<sup>28</sup> Without a right to control, the alleged

21. *Id.* at 638.

22. *Id.*

23. *Id.*

24. MO. REV. STAT. § 537.600.1 (1994).

25. MO. REV. STAT. § 537.600.1(1) (1994); *see Woods v. Kelley*, 948 S.W.2d 634, 637 (Mo. Ct. App. 1997).

26. *Woods*, 948 S.W.2d at 637. When searching for the meaning of "public employee" under MO. REV. STAT. § 537.600.1(1) (1994), courts must "look to the traditional common law doctrine of vicarious liability, and its attendant definitions of master and servant" so as not to neglect the compensatory purpose of the statute. *Bowman v. State*, 763 S.W.2d 161, 164 (Mo. Ct. App. 1988).

27. *See Dean v. Young*, 396 S.W.2d 549, 553 (Mo. 1965) ("This element, control or right to control, is the element most frequently referred to in our cases distinguishing a servant from an independent contractor."); *Gardner v. Simmons*, 370 S.W.2d 359, 362 (Mo. 1963); *Corder v. Morgan Roofing Co.*, 166 S.W.2d 455, 457 (Mo. 1942); *Woods*, 948 S.W.2d at 637; *Wilson v. St. Louis Area Council, Boy Scouts of Am.*, 845 S.W.2d 568, 570 (Mo. Ct. App. 1992); *Bowman*, 763 S.W.2d at 163; *Usrey v. Dr. Pepper Bottling Co.*, 385 S.W.2d 335, 339 (Mo. Ct. App. 1964).

28. *Woods*, 948 S.W.2d at 637 (citing *Balderas v. Howe*, 891 S.W.2d 871, 873-74

servant is an independent contractor.<sup>29</sup> However, no one test is conclusive as to the master's "right to control."<sup>30</sup>

Some Missouri cases look to the Restatement (Second) of Agency Section 220 to determine whether one acting for another is a servant.<sup>31</sup> The Restatement lists the following factors:

- a) the extent of control which, by the agreement, the master may exercise over the details of the work; b) whether or not the one employed is engaged in a distinct occupation of business; c) the kind of operation with reference to whether, in the locality, the work is usually done under direction of the employer or by a specialist without supervision; d) the skill required in the particular occupation; e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; f) the length of time for which the person is employed; g) the method of payment, whether by time or by job; h) whether or not the work is part of the regular business of the employer; i) whether or not the parties believe they are creating the relationship of master and servant; and j) whether the principal is or is not in business.<sup>32</sup>

Although the Restatement factors should be considered, "[t]he determining factor is not whether [the alleged master] actually exercised control over the work. . . but whether [the alleged master] had the *right* to exercise that control."<sup>33</sup>

In *Carter v. Wright*,<sup>34</sup> the Missouri Court of Appeals held that a worker was an "employee" under a theory of *respondeat superior*.<sup>35</sup> The worker's negligence occurred while the employee was hauling sheetrock for his employer.<sup>36</sup> The court examined the factors in the Restatement (Second) of

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(Mo. Ct. App. 1995)).

29. *Hougland v. Pulitzer Publ'g Co.*, 939 S.W.2d 31, 33 (Mo. Ct. App. 1997).

30. *Woods v. Kelley*, 948 S.W.2d 634, 637 (Mo. Ct. App. 1997); *see Sharp v. W. & W. Trucking Co.*, 421 S.W.2d 213, 220 (Mo. 1967) (citing *Gardner v. Simmons*, 370 S.W.2d 359, 361 (Mo. 1963)); *Cloninger v. Wolfe*, 477 S.W.2d 440, 442-43 (Mo. Ct. App. 1972) (stating that "no one of the sundry elements which enter into a determination of the actual master-servant relationship is alone conclusive, and all must be viewed to see whether control, or a right of control has been retained over the alleged servant's physical conduct and details of the work").

31. *Carter v. Wright*, 949 S.W.2d 157, 160 (Mo. Ct. App. 1997); *Ferguson v. Pony Express Courier Corp.*, 898 S.W.2d 128, 132 (Mo. Ct. App. 1995); *Pratt v. Reed & Brown Hauling Co.*, 361 S.W.2d 57, 62-63 (Mo. Ct. App. 1962).

32. RESTATEMENT (SECOND) OF AGENCY § 220(2) (1958).

33. *Pratt*, 361 S.W.2d at 63.

34. 949 S.W.2d 157 (Mo. Ct. App. 1997).

35. *Id.* at 162.

36. *Id.*

Agency Section 220 and found that the employer had a right to control the actions of his employee.<sup>37</sup> The right to control was established because the employer chose the dumpsite, gave the employee directions as to its location, supervised and worked with the employee, and the worker obeyed the employer.<sup>38</sup> The court also found the worker was not engaged in a distinct occupation, was paid by the hour, regularly worked for the employer, routinely took orders from the employer's supervisor, and that the work required a minimal degree of skill.<sup>39</sup>

In *Archer v. Outboard Marine Corp.*,<sup>40</sup> the Missouri Court of Appeals looked to whether the person sought to be charged as master had the right or power to control and direct the physical conduct of the servant. However, this case emphasized the *quality* of the control exerted by the alleged master over the servant. The court examined whether the right to control was "complete and unqualified," including control over the details of performance,<sup>41</sup> and held that a fishing tournament sponsor had not exercised sufficient control over a fishing tournament to render it vicariously liable for the death of a tournament contestant.<sup>42</sup> The plaintiffs proved that the sponsor exerted enough influence over the tournament to require implementation of safety requirements.<sup>43</sup> However, the court found that "the undisputed evidence establishe[d]" that the exerted influence was not based upon a right to control, but by "negotiation and persuasion."<sup>44</sup> In other words, if the association hosting the tournament and its director had chosen to resist, the sponsor "would not have been able to exert its influence."<sup>45</sup> Only the association and its director had the authority to run, direct, and supervise the tournament; the director chose the sites, rules, and details.<sup>46</sup>

Missouri case law indicates that Missouri courts use the "right to control" test to determine issues of vicarious liability and the Restatement factors provide helpful guidance in making these determinations. The findings of vicarious liability arise most frequently in cases concerning persons who were clearly paid employees, but such determinations become more elusive when unpaid volunteers, rather than traditional employees, are the negligent actors.

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37. *Id.*

38. *Id.* at 160.

39. *Id.* at 161-62.

40. 908 S.W.2d 701 (Mo. Ct. App. 1995).

41. *Id.* at 703.

42. *Id.* at 701-02.

43. *Id.* at 703.

44. *Id.*

45. *Id.*

46. *Id.*

### B. Vicarious Liability for Volunteers

As with paid employees, Missouri recognizes that one who volunteers services<sup>47</sup> may create liability for a person or organization that accepts the volunteer's services.<sup>48</sup> Like the traditional findings of a master-servant relationship, determination of liability lies in the right of the master to control the acts of the servant.<sup>49</sup> The requisite master-servant relationship is established when the alleged master "has the right to direct the method by which the master's service is performed."<sup>50</sup>

In *Wilson v. St. Louis Area Council Boy Scouts of America*,<sup>51</sup> the Missouri Court of Appeals held that adult volunteer Boy Scout troop leaders were not servants or agents of the Boy Scouts of America when a member of a Boy Scout troop was killed on a trip to Fort Leonard Wood, Missouri.<sup>52</sup> The court reasoned that the structure of the organization was such that the troop and its leaders were not required to get permission from the local council before participating in its activities.<sup>53</sup> The council neither ordered nor directed the troop or its leaders to go to Fort Leonard Wood, nor did the council know of the troop's excursion.<sup>54</sup>

Like Missouri, other jurisdictions recognize the doctrine of *respondet superior* for the torts of unpaid volunteers and take the position expressed in the Restatement (Second) of Agency Section 225 that "one who volunteers services without an agreement for or expectation of reward may be a servant of the one accepting such services."<sup>55</sup> The comments to the Restatement further clarify the rule, stating that the consent of the master, or the manifestation of consent, is required before the master-servant relationship is established.<sup>56</sup> Most

47. "Volunteer" is defined as:

[O]ne who enters into service of his own free will; one who gives his services without any express or implied promise of remuneration; one who has no interest in the work, but nevertheless undertakes to assist therein; one who merely offers his services on his own free will, as opposed to one who is conscripted.

*Bond v. Cartwright Little League, Inc.* 536 P.2d 697, 702 (Ariz. 1975).

48. *Wilson v. St. Louis Area Council, Boy Scouts of Am.*, 845 S.W.2d 568, 571 (Mo. Ct. App. 1992) (citing Allan Manley, Annotation, *Liability of Charitable Organization Under Respondet Superior Doctrine for Tort of Unpaid Volunteer*, 82 A.L.R.3d 1213, 1216 (1978)).

49. *Id.*

50. *Woods v. Kelley*, 948 S.W.2d 634, 638 (Mo. Ct. App. 1997) (citing *Wilson*, 845 S.W.2d at 570-71).

51. 845 S.W.2d 568 (Mo. Ct. App. 1992).

52. *Id.* at 571.

53. *Id.*

54. *Id.*

55. Manley, *supra* note 48, at 1216 (citing RESTATEMENT (SECOND) OF AGENCY § 225 (1958)).

56. *See* Manley, *supra* note 48, at 1216 (citing RESTATEMENT (SECOND) OF AGENCY

jurisdictions also require that a charitable organization have the right to control the activities of its volunteers before finding a master-servant relationship.<sup>57</sup>

In *Scottsdale Jaycees v. Superior Court of Maricopa County*, an Arizona Court of Appeals determined that a nonprofit organization, the Scottsdale Jaycees, was not liable under the doctrine of *respondeat superior* for the death and injuries sustained by passengers in an automobile accident.<sup>58</sup> The accident occurred while a delegate board member and his passengers were traveling to a board meeting.<sup>59</sup> The court questioned whether volunteers were servants or agents for a principal,<sup>60</sup> and determined that a volunteer who “consents or manifests consent to the existence of the relation by the person for whom the service is performed” may be a servant or agent for a principal.<sup>61</sup> The court also noted that a right to control is the necessary element in a master-servant relationship.<sup>62</sup> The Scottsdale Jaycees did consent to Cox acting as a volunteer delegate to the board meeting,<sup>63</sup> and until Cox arrived at the meeting and proceeded to exercise his duties as a delegate, the Jaycees could not exercise control over him.<sup>64</sup> Thus, the master-servant relationship did not exist while the member was merely traveling to the meeting.<sup>65</sup>

Other courts also apply a “right to control” test to decide whether a master-servant relationship exists, but the question of liability does not ultimately depend on the right to direct the method by which the master’s service is performed.<sup>66</sup> In *Whetstone v. Dixon*,<sup>67</sup> Dixon, a deacon of the Faith and Truth Baptist Church, drove his own truck to pick up materials to use in remodeling the church.<sup>68</sup> While en route to obtain the materials, Dixon collided with another vehicle.<sup>69</sup> Although the Louisiana Court of Appeals ultimately reversed the trial

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§ 225 cmt. c (1958)).

57. See *Evans v. Ohio State Univ.*, 680 N.E.2d 161, 174 (D. Ohio 1996); Manley, *supra* note 48, at 1221.

58. 499 P.2d 185 (Ariz. Ct. App. 1972).

59. *Id.*

60. *Id.* at 188.

61. *Id.* (citing RESTATEMENT (SECOND) OF AGENCY § 225 cmt. c (1958)).

62. *Id.* at 189.

63. *Id.* at 188.

64. *Id.* at 189.

65. *Id.*

66. See *El Paso Laundry Co., v. Gonzales*, 36 S.W.2d 793, 795 (Tex. Civ. App. 1931) (holding that the “the relation of master and servant exists whenever the employer retains the right to direct the manner in which the business shall be done, as well as the result to be accomplished . . . . Inasmuch as the right to control involves the power to discharge, the existence of the power to discharge is essential, and is an indicium of the relation”).

67. 616 So. 2d 764, 766 (La. Ct. App. 1993).

68. *Id.*

69. *Id.*



court and found the church vicariously liable,<sup>70</sup> it looked to the same factors as the trial court did in reaching the decision. The court stated that whether a volunteer is a servant depends on the following: (1) whether the volunteer receives compensation; (2) the volunteer's status within the organization; (3) the volunteer's "specific mission;" (4) whether the relationship between the alleged servant and master is "intense;" (5) the extent of the alleged master's control over the volunteer; and (6) the role of the organization in conferring authority and exercising control over the volunteer and the direct benefit to the association.<sup>71</sup>

According to the court, Dixon was "more than a casual volunteer;"<sup>72</sup> he assumed ongoing responsibilities for the church, and the church continued to delegate duties to him.<sup>73</sup> As a deacon, Dixon was closer to "executive status" than regular church membership.<sup>74</sup> On the day of the collision, Dixon made the trip at the request of the Board of Deacons, who designated the places to obtain the remodeling materials and the time by which delivery was expected.<sup>75</sup> Furthermore, the remodeling project was not an ordinary duty, but "a once in a lifetime project, intense in nature."<sup>76</sup> Finally, Dixon's activities produced a direct economic benefit to the church because the church saved money by sending its own members to pick up the materials instead of having the materials delivered.<sup>77</sup>

Although courts such as those in Louisiana may look to many factors in determining when an organization or charitable institution is vicariously liable for the actions of its volunteers, the *Woods v. Kelley* court made its finding of non-liability based on the traditional "right to control" analysis.

#### IV. INSTANT DECISION

In *Woods v. Kelley*, the Missouri Court of Appeals found that the City of Grandview was not liable for Kelley's actions on either a statutory or common

70. *Id.* at 774. The court stated that "[i]f the facts presented in this case do not support a finding of vicarious liability, then we find it difficult to imagine a situation wherein vicarious liability could be imposed on a charitable organization for the acts of its volunteer." *Id.* at 772 n.7.

71. *Id.* at 770; *cf.* *Doe v. Roman Catholic Church*, 602 So. 2d 129, 133 (La. Ct. App.) (holding that the right to control is determined by the following questions: "(1) the degree to which the charity orders the volunteer to perform various services, (2) the degree of contact between the charity and the volunteer, and (3) the structural hierarchy of the charity"), *rev'd*, 606 So. 2d 524 (La. 1992)

72. *Whetstone v. Dixon*, 616 So. 2d 764, 771 (La. Ct. App. 1993).

73. *Id.* at 770.

74. *Id.*

75. *Id.* at 772.

76. *Id.* at 771.

77. *Id.*

law basis.<sup>78</sup> The court found that although the City controlled the landscaping and maintenance services, knew of Kelley's services, had the right to terminate Kelley's volunteer efforts, and could refuse Kelley's expenditures, it had only general control over Kelley, or the type of control exercised over an independent contractor.<sup>79</sup>

The court stated that a showing of much more specific and direct control was needed to create a "public employee relationship."<sup>80</sup> The plaintiff provided no evidence that the City controlled the manner, method, and means of Kelley's volunteer services.<sup>81</sup> She volunteered to help with projects in which she wanted to participate, and the City of Grandview did not regulate the amount of hours or the dates on which she worked.<sup>82</sup> The City did not supervise or give instructions as to what services Kelley should perform or where she should perform those services.<sup>83</sup> Kelley did not inform the City, prior to her arrival, of what services she would volunteer on a particular day.<sup>84</sup> In addition, although the City sometimes paid for Kelley's materials, she often paid for the materials herself.<sup>85</sup> The court concluded that the City of Grandview was not in control of Kelley's volunteer efforts.<sup>86</sup>

As to the plaintiffs' common law claims of *respondeat superior*, the court declared the Woods' contention to be "moot."<sup>87</sup> The court reasoned that the plaintiffs could not recover under the common law theory if Kelley was not a "public employee" because Kelley could not have been operating within the scope of her employment.<sup>88</sup>

## V. COMMENT

The importance of *Woods v. Kelley* lies in its analysis of how the doctrine of *respondeat superior* affects those who utilize the services of volunteers. The court in *Kelley* conceded that the City had control over most aspects of Kelley's volunteer services. The court found that the City of Grandview controlled Kelley's landscaping and maintenance services, knew of Kelley's services, had

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78. *Woods v. Kelley*, 948 S.W.2d 634, 638 (Mo. Ct. App. 1997). The court also found that the city did not waive its sovereign immunity defense because Kelley did not fall within the definition of a "public employee" under MO. REV. STAT. § 537.600.1(1) (1994). *Id.*

79. *Id.* at 637.

80. *Id.*

81. *Id.* at 638.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

the right to terminate Kelley's volunteer efforts, and could refuse Kelley's expenditures.<sup>89</sup> According to the court, "[t]his evidence establishes a general type of control over Kelley . . . ."<sup>90</sup> However, the court looked beyond this general "right to control" standard and required that the City exert "specific control" over the activity in which Kelley was engaged at the time the negligence occurred. This decision suggests that courts may be less willing to impose vicarious liability for the acts of volunteers than they would be for paid employees.

From a policy standpoint, the imposition of liability for volunteers may cause organizations to cease using volunteers so that these organizations may avoid liability. This result would be detrimental to society, which benefits from volunteer work. On the other hand, the notion of burden shifting may weigh in favor of finding liability. Organizations which benefit from volunteer services may be in a better position to bear the risk of loss than the harmed individual. This risk can be offset by the purchase of insurance and may be distributed among other insured parties paying premiums in similar situations. Requiring organizations accepting volunteer services to bear the risk of loss will encourage organizations to better supervise their volunteers and reduce potential harms. By making it difficult to find vicarious liability for volunteers, courts give these organizations little incentive to protect against the negligence of their volunteers.

Missouri's rule, apparently requiring that an alleged master's control over a volunteer's activities be "specific and direct"<sup>91</sup> or "complete and unqualified,"<sup>92</sup> should be softened to impose vicarious liability on organizations that acquiesce in receiving volunteer services. Volunteers that work for an organization without supervision may engage in the same types of risk activities that supervised, paid employees undertake. At least in the case of supervised, paid employees, the threat of liability induces the employer to minimize risks to others. If an organization can simply avoid liability by not supervising the activities of their volunteers, society and the volunteer must absorb the costs of the harm negligently caused by the volunteers who are acting to advance the interests of their organizations. The court should toughen the rules of vicarious liability by either of two routes: 1) treat volunteers like paid employees, or 2) use multi-factor tests similar to those applied in Louisiana.<sup>93</sup>

What would the Missouri court have decided if Kelley had been paid for her services? Under the *Whetstone* factors,<sup>94</sup> the *Kelley* facts could make the City's

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89. *Id.* at 637.

90. *Id.*

91. *Id.*

92. *Id.* at 638 (citing *Archer v. Outboard Marine Corp.*, 908 S.W.2d 701, 703 (Mo. Ct. App. 1995)).

93. See *Whetstone v. Dixon*, 616 So. 2d 764, 766 (La. Ct. App. 1993); *Doe v. Roman Catholic Church*, 602 So. 2d 129, 133 (La. Ct. App.), *rev'd*, 606 So. 2d 524 (La. 1992).

94. *Whetstone*, 616 So. 2d at 770.

vicarious liability a submissible jury question. The City had ultimate control over the landscaping and maintenance services at Shelton House and could approve and reimburse Kelley for her expenditures.<sup>95</sup> Furthermore, Kelley provided a direct economic benefit to the City on the day of the accident.

The fact that a volunteer's services benefit an organization should be a significant consideration in determining vicarious liability. When the organization benefits from and knows of the volunteer's services, the organization should bear the risk of injury to others. This would be a particularly useful strategy in cases where the facts would not otherwise support a finding of vicarious liability.

The reasons why such a finding becomes more difficult in the case of volunteers is unclear. Arguably, the standard for finding vicarious liability should not be more stringent for the acts of volunteers.

## VI. CONCLUSION

For the moment, organizations that use volunteers should examine the extent of their control over their volunteers to determine their risk of vicarious liability. The solution for organizations to avoid liability may be for the organization to exert no specific control over the acts of volunteers. Nonetheless, future public policy considerations may prompt Missouri courts to find vicarious liability more readily in cases involving volunteers.

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95. *Woods v. Kelley*, 948 S.W.2d 634, 637 (Mo. Ct. App. 1997).

