

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TAMMY HERSEY, as Personal)	
Representative of the Estate of)	
Jason Hersey,)	
)	
Plaintiff,)	
)	
v.)	CV-10-31-B-W
)	
KEMPER INDEPENDENCE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

ORDER ON MOTION FOR SUMMARY JUDGMENT

On December 28, 2009, Tammy Hersey, acting as the personal representative of the Estate of Jason Hersey, filed a Complaint in Maine State Superior Court against Kemper Independence Insurance Company (Kemper). *Compl.* Attach. 1 (Docket # 1). According to the Complaint, on April 2, 2004, Jamison O’Neal negligently operated a motor vehicle under the influence of alcohol and as a consequence, became involved in a motor vehicle accident in which Jason Hersey was killed. *Id.* ¶¶ 1-3. The Complaint further alleges that Kemper Insurance Company had issued a homeowners insurance policy to David Condon and that Laurie Hafford, a resident of Mr. Condon’s home, had illegally furnished alcohol to Mr. O’Neal, a minor. *Id.* ¶¶ 5-6, 10. Finally, it alleges that Ms. Hersey had brought a negligence action against Ms. Hafford in Aroostook County Superior Court and had been awarded a judgment of \$200,000.00. *Id.* ¶ 8. It sought recovery against Kemper under Maine’s reach and apply statute, 24-A M.R.S.A. § 2904.

On January 20, 2010, Kemper removed this civil action to this Court, and the same day moved to dismiss the Complaint. *Notice of Removal* (Docket # 1); *Mot. to Dismiss* (Docket # 5). Ms. Hersey responded to the motion to dismiss and Kemper replied. *Pl. 's Objection to Def. 's Mot. to Dismiss* (Docket # 8); *Def. 's Reply Mem. in Support of Mot. to Dismiss* (Docket # 9). On February 16, 2010, the Court denied the motion to dismiss. *Order on Mot. to Dismiss* (Docket # 10).

On February 17, 2010, Kemper moved for summary judgment. *Def. 's Mot. for Summ. J.* (Docket # 15). Ms. Hersey did not respond. Instead, on May 6, 2010, she filed a proposed Stipulation of Dismissal without prejudice. *Stip. of Dismissal without Prejudice* (Docket # 18). Kemper objected to the “without prejudice” aspect of the dismissal, and the Court ordered Ms. Hersey to respond by June 7, 2010. *Objection to “Stip. of Dismissal without Prejudice”* (Docket # 19); *Order* (Docket # 20). On June 4, 2010, Ms. Hersey filed a Notice which reads:

It is agreed that Defendant’s Motion for Summary Judgment be granted and that the Defendant waives all claims it may have against Plaintiff including reimbursement for costs.

Notice (Docket # 21).

Based on the agreement of the parties, the Court GRANTS the Defendant’s Motion for Summary Judgment (Docket # 15). The Court DISMISSES without prejudice as moot the Defendant’s Objection to the Stipulation of Dismissal (Docket # 19). The Court ORDERS Judgment to issue in favor of Defendant Kemper Independence Insurance Company and against Plaintiff Tammy Hersey without costs.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 10th day of June, 2010

Plaintiff

TAMMY HERSEY

*As Personal Representative of the
Estate of Jason Hersey*

represented by **PETER S. KELLEY**
LAW OFFICE OF PETER S.
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ATTORNEY TO BE NOTICED

V.

Defendant

**KEMPER INDEPENDENCE
INSURANCE COMPANY**

represented by **JOHN B. LUCY**
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