

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Dack Downing v. Shannon Thompson and Western Flyer Express, LLC

Downing · No. 25-2225-EFM-BGS · Decided December 17, 2025

SUMMARY

The United States District Court for the District of Kansas considers Western Flyer Express, LLC’s motions to dismiss claims arising from a vehicle collision. The court denies as moot the earlier motion directed at the superseded complaint, denies dismissal of the common-law negligence claim, and dismisses the negligence per se and attorney-fee claim under K.S.A. 66-176.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Eric F. Melgren
JURISDICTION	United States District Court for the District of Kansas
DECIDED	December 17, 2025
DOCKET	25-2225-EFM-BGS
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Western Flyer Express, LLC moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Counts II and III of Plaintiff's Second Amended Complaint.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true but need not accept legal conclusions. The complaint must contain sufficient factual matter to state a claim that is plausible on its face, providing fair notice of the claim and its grounds.
PRECEDENTIAL VALUE	unpublished district court memorandum and order; persuasive rather than precedential
PARTIES	Dack Downing v. Shannon Thompson, Western Flyer Express, LLC

TOPICS

- motions to dismiss
- negligence
- negligent hiring
- negligent supervision
- negligent retention

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Downing plausibly stated a common-law negligence claim against WFX based on alleged negligent hiring, training, supervision, and retention.
2. Whether Downing could state a negligence-per-se claim and obtain attorney fees under K.S.A. 66-176 based on alleged violations of Kansas law incorporating the Federal Motor Carrier Safety Regulations.
3. Whether WFX's first motion to dismiss remained operative after Downing filed the Second Amended Complaint.

HOLDINGS

1. Count II plausibly stated a common-law negligence claim under Kansas law. A plaintiff need not plead separate facts establishing independent negligent hiring, training, supervision, or retention causes of action; the plaintiff must plead facts plausibly showing an employer's duty of reasonable care, breach, and causation of damages.
2. Count III failed to state a negligence-per-se claim because it was impermissibly premised on a private cause of action for violations of the Federal Motor Carrier Safety Regulations. Because the claim failed, there was no basis for attorney fees under K.S.A. 66-176.
3. The first motion to dismiss was denied as moot because the Second Amended Complaint superseded the pleading challenged by that motion.

KEY QUOTATIONS

"While an employer's practices when hiring, training, and supervising its employees may be evidence of a breach of an employer's duty of reasonable care to third parties, they are not separate causes of action." (-4)

"Instead, a plaintiff need only plead enough facts to plausibly state that an employer owed a duty of reasonable care, breached that duty, and caused damages." (-4)

"Because Plaintiff cannot assert a private cause of action based on a violation of FMCSRs, Plaintiff's negligence per se claim as pled in Count III must fail." (-6)

FACTUAL BACKGROUND

On December 4, 2024, Dack Downing was driving westbound on Highway 56 in Stevens County, Kansas. Shannon Thompson, while operating a semi-trailer in the course of her employment with Western Flyer Express, LLC, traveled southbound on Highway 25 and allegedly failed to stop at a stop sign before colliding with Downing. Downing alleged that WFX negligently hired, trained, supervised, and retained Thompson and violated federal motor-carrier safety requirements.

PROCEDURAL HISTORY

Downing filed the action on April 24, 2025, and later filed a Second Amended Complaint. WFX's initial motion to dismiss Counts II and III was denied as moot because the amended pleading superseded the First Amended

Complaint. WFX incorporated its arguments into a second motion, which the court granted as to Count III and denied as to Count II.

DISPOSITION

other

CASES CITED

- Ridge at Red Hawk, LLC v. Schneider, 493 F.3d 1174, 1177 (10th Cir. 2007)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Robbins v. Oklahoma, 519 F.3d 1242, 1247-48 (10th Cir. 2008)
- Kobilan v. Colter, 2017 WL 4843292, at *1-3 (D. Kan. Oct. 26, 2017)
- Reardon ex rel. Est. of Parsons v. King, 310 Kan. 897, 452 P.3d 849, 857 (2019)
- Dionne v. ITP W. Express, Inc., 2020 WL 4347044, at *3 (D. Kan. July 29, 2020)
- Chavez-Matchie v. Jack Cooper Transp. Co., 2017 WL 2378334, at *3 (D. Kan. June 1, 2017)
- Stewart v. Mitchell Transp., 241 F. Supp. 2d 1216, 1220-21 (D. Kan. 2002)
- Drake v. Old Dominion Freight Line, Inc., 2016 WL 1328941, at *3-5 (D. Kan. Apr. 5, 2016)