

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

VANESSA HASSELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case. No. 20-05042-CV-S-BP
	)	
JOHN HOWARD,	)	
	)	
Defendant.	)	

**ORDER GRANTING DEFENDANT’S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Pending is Defendant John Howard’s Motion for Partial Summary Judgment. (Doc. 30.)

For the following reasons, the Motion is **GRANTED**.

I. BACKGROUND

The facts of this case are simple and undisputed (at least for purposes of this Motion), so the Court will cite to the Record only when necessary. Plaintiff Vanessa Hassell was driving a car and did not have personal automobile insurance. She was involved in an automobile accident with Defendant and suffered injuries. At the time, Defendant had automobile insurance. Plaintiff brought suit against Defendant in state court on November 26, 2019, requesting both economic and non-economic damages. (*See* Doc. 1-2, pp. 3–4 (the state court Petition).)

Now, Defendant has moved for partial summary judgment with respect to only Plaintiff’s request for non-economic damages. (Doc. 31, p. 3.) Defendant argues that Plaintiff is barred from recovering non-economic damages under MO. REV. STAT. § 303.390.1. That statute provides that where an uninsured motorist is engaged in an accident with an insured motorist, the uninsured motorist “shall waive the ability to have a cause of action or otherwise collect for noneconomic loss.”

For purposes of Defendant’s motion, Plaintiff does not deny that this statute exists or applies to the facts of this case. Instead, she contends that the statute is invalid under two provisions of the Missouri Constitution: Article I, Section 22(a) of the Missouri Constitution, which provides that “the right of trial by jury as heretofore enjoyed shall remain inviolate,” (Doc. 33, p. 4), and the equal protection clause of the Missouri Constitution. (*Id.* at pp. 8–9.) The Court resolves these issues below.

II. DISCUSSION

“Summary judgment should be granted when—viewing the facts most favorably to the nonmoving party and giving that party the benefit of all reasonable inferences—the record shows that there is no genuine issue of material fact.” *Schilf v. Eli Lilly & Co.*, 687 F.3d 947, 948 (8th Cir. 2012) (citing FED. R. CIV. P. 56(c)). “A fact is material if it might affect the outcome of the suit,” and a genuine dispute exists when “the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Dick v. Dickinson State Univ.*, 826 F.3d 1054, 1061 (8th Cir. 2016) (cleaned up; citations omitted).

Here, no facts are in dispute. Instead, Defendant’s motion presents two pure legal questions: whether MO. REV. STAT. § 303.390.1 violates (1) Article I, Section 22(a) of the Missouri Constitution or (2) the equal protection clause of the Missouri Constitution. The Court addresses each of these questions in turn, mindful that under Missouri law, a legitimately enacted statute “carries with it a strong presumption of constitutionality,” so the Court should “resolve doubts in favor of . . . [its] validity.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. 1994) (en banc).

1. The Right to Trial by Jury

At issue in this case are two facets of Missouri law, between which there appears to be some tension. On the one hand, the Missouri legislature has broad power to alter the rights and liabilities that existed at common law. The Missouri Constitution provides that the common law shall remain in force “until amended or repealed by the general assembly.” MO. CONST. ART. XII, § 2. The same principle appears in Missouri statutes; MO. REV. STAT. 1.010 provides that “no act of the general assembly . . . shall be held to be invalid, or limited in its scope or effect by the courts of this state, for the reason that it is in derogation of, or in conflict with, the common law . . . ; but all acts of the general assembly, or laws, shall be liberally construed, so as to effectuate the true intent and meaning thereof.” Consequently, Missouri courts have repeatedly held that “[i]t is axiomatic that the General Assembly, which specifically adopted the common law, retains the authority to abrogate it in its statutes.” *State v. Bouse*, 150 S.W.3d 326, 333 (Mo. Ct. App. 2004). Thus, the Missouri legislature retains the power to “[p]lac[e] reasonable limitations on common law causes of action,” including by limiting the types of damages a plaintiff may recover. *Fust v. Attorney General*, 947 S.W.2d 424, 430–31 (Mo. 1997) (en banc). The legislature may also “abolish common law causes of action.” *Ordinola v. University Physician Associates, et al.*, 2021 WL 3119063, at *3 (Mo. July 22, 2021) (en banc); *see also Holder v. Elms Hotel Co.*, 92 S.W.2d 620, 624 (Mo. 1936) (“[T]he Constitution does not forbid the creation of new rights, *or the abolition of old ones recognized by the common law*, to attain a permissible legislative object”) (emphasis added).

On the other hand, Article I, Section 22(a) of the Missouri Constitution provides that the legislature may not abridge the “right of trial by jury as heretofore enjoyed” at common law. The Missouri Supreme Court has set out a two-part test for ascertaining whether a law violates this

provision. The first part requires the plaintiff to show that the right at issue was “heretofore enjoyed”—that is, that her cause of action “is the same type of case that was recognized at common law when the constitution was adopted in 1820,” and would have been decided by a jury at that time. *Watts ex rel. Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 638 (Mo. 2012) (en banc). The second part of the test requires determining whether the right to a trial by jury “remains inviolate” in light of the challenged law. *Id.* at 640. Thus, in *Watts*, the Missouri Supreme Court held that a statutory cap on non-economic damages in medical malpractice cases violates Article I, Section 22(a). *Id.* It reasoned that a “cap on the jury’s award of non-economic damages that operates wholly independent of the facts of the case” infringes on “the jury’s constitutionally assigned role of determining damages according to the particular facts of the case”; it also announced the general rule that “any limit on damages that restricts the jury’s fact-finding role violates the constitutional right to trial by jury.” *Id.*

Defendant does not contest that negligence—which is the cause of action Plaintiff asserts—existed at common law in 1820, and hence, that Plaintiff has satisfied the first prong of the *Watts* test. (Doc. 36, p. 5.) Thus, the question is whether the right to a jury trial remains “inviolate” in light of MO. REV. STAT. § 303.390.1. Or put differently, the question is whether MO. REV. STAT. § 303.390.1 is a valid exercise of legislative power to “[p]lac[e] reasonable limitations on common law causes of action,” *Fust*, 947 S.W.2d at 430–31, or whether it is like the damage cap struck down in *Watts*.

The Court—mindful that it must uphold a Missouri statute unless it “clearly and undoubtedly violates” a constitutional provision, *Hammerschmidt*, 877 S.W.2d at 102—finds that MO. REV. STAT. § 303.390.1 does not violate the Missouri Constitution. The *Watts* opinion rests on the principle that “the jury’s role in a civil case is to determine the facts,” and the “amount of

non-economic damages is a fact that must be determined by the jury.” 376 S.W.3d at 640 (emphasis added). Because a damage cap requires a court to take the amount of damages already found by a jury and reduce that amount to a specified figure, it interferes with “the assessment of damages[, which] is one of the factual findings assigned to the jury rather than to a judge.” *Id.* The *Watts* court also stressed that the damage cap “operates wholly independent of the facts of the case,” *id.*—meaning that no matter the factual circumstances, a plaintiff could not obtain a greater amount of damages than the cap.

Section 303.390.1 is different in several salient ways from a damage cap. First, it is not “wholly independent of the facts of the case.” Instead, it applies *only* under certain factual circumstances—namely, in an automobile accident where the plaintiff was uninsured and the defendant was insured. As Defendant points out, “applying the law to the facts” and “determin[ing] [] the legal consequences” of those facts are fundamentally matters for the Court, rather than a jury, to decide. (Doc. 36, p. 4.) It would not infringe the right to a trial by jury if the Court held that a tort victim could not recover damages for a pure economic loss, or a breach of contract plaintiff could not recover punitive damages, because those decisions would involve applying the law to the facts—which is the basic responsibility of the Court. *See, e.g., Captiva Lake Invs., LLC v. Ameristructure, Inc.*, 436 S.W.3d 619, 628 (Mo. Ct. App. 2014) (affirming summary judgment on a negligence claim because a plaintiff cannot “seek[] to recover in tort for economic losses that are contractual in nature”); *Wallick v. First State Bank*, 532 S.W.2d 520, 524 (Mo. Ct. App. 1976) (reversing award of punitive damages for a breach of contract claim).

Second, § 303.390.1, unlike the damage cap in *Watts*, does not by its terms interfere with the jury’s determination of the *amount* of damages—rather, it provides that under specific factual circumstances, a plaintiff may not recover *any* of a certain form of damages. Section 303.390.1

“abolish[es]” a common-law right of action for non-economic damages if the plaintiff is uninsured and the defendant is insured, *Ordinola*, 2021 WL 3119063, at *3; put differently, it is a “reasonable limitation on” a common law right of action that categorically prevents certain plaintiffs from recovering certain types of damages. *Fust*, 947 S.W.2d at 430–31.* Imposing such a limitation is well within the legislature’s power to “aboli[sh] [] old [rights] recognized by the common law,” *Holder*, 92 S.W.2d at 624, or otherwise “abrogate [the common law] in its statutes.” *Bouse*, 150 S.W.3d at 333. To hold otherwise would be to strike down a law merely “for the reason that it is in derogation of, or in conflict with, the common law”—which would be inconsistent with the principles of Missouri law. *See* MO. REV. STAT. § 1.010.

The Court recognizes that this is a complex legal issue on which reasonable minds could differ. In particular, it is cognizant that another opinion from the Western District of Missouri, *Jiles v. Schuster Co.*, reached the opposite conclusion. *See* 357 F. Supp. 3d 908 (W.D. Mo. 2018). But *Jiles* is not binding on the Court, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (citation omitted), and the very fact that reasonable minds could differ suggests that the law does not “clearly and undoubtedly violate[]” the Missouri Constitution. *Hammerschmidt*, 877 S.W.2d at 102. Consequently, the Court respectfully disagrees with *Jiles*, and holds that § 303.390.1 applies to this case, is not unconstitutional under Article I, Section 22(a) of the Missouri Constitution, and prevents Plaintiff from recovering non-economic damages.

* The Court thus rejects Plaintiff’s argument that § 303.390.1 is “essentially [] a [damage] cap of \$0.” (Doc. 33, p. 8.) There is a fundamental difference between capping a certain type of damages at an amount less than that found by the jury and barring a plaintiff from recovering a certain type of damages. A breach of contract plaintiff simply cannot recover punitive damages, not because the plaintiff’s punitive damages are “capped” at zero dollars, but because the law does not permit *any* of that sort of damages to be recovered under those circumstances.

2. The Equal Protection Clause

Plaintiff also argues that § 303.390.1 is unconstitutional under the Missouri Constitution's equal protection clause. (Doc. 33, p. 9.) Plaintiff does not argue that she belongs to a protected class—instead, she argues that a trial by jury is a “fundamental right,” and therefore, any law infringing on it is subject to strict scrutiny. (*Id.*) Thus, this argument is wholly dependent on Plaintiff's argument under Article I, Section 22(a) of the Missouri Constitution. Because the Court has rejected that argument and held that § 303.390.1 does not infringe on the right to a trial by jury, it finds that strict scrutiny does not apply, and therefore that the section is not invalid under the equal protection clause.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion for Partial Summary Judgment, (Doc. 30), is **GRANTED**.

IT IS SO ORDERED.

DATE: August 12, 2021

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT