

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

J.P. AND H.P., BY J.P., HIS ATTORNEY IN FACT; D.S. AND R.S., BY D.S.,  
HIS ATTORNEY IN FACT; V.P. AND G.P., BY V.P., HER ATTORNEY IN FACT;  
S.M. AND V.M., BY S.M., HER ATTORNEY IN FACT

Appellants

v.

MISSOURI STATE FAMILY SUPPORT DIVISION AND  
ITS DIRECTOR, JANEL LUCK

Respondents

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DOCKET NUMBER **WD70994**

DATE: April 20, 2010

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Jon Edward Beetem, Judge

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Appellate Judges:

Division Four: Thomas H. Newton, C.J., James M. Smart, Jr., and Cynthia L. Martin, JJ.

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

J.P. AND H.P., BY J.P., HIS ATTORNEY IN FACT; D.S. AND R.S.,  
BY D.S., HIS ATTORNEY IN FACT; V.P. AND G.P., BY V.P., HER  
ATTORNEY IN FACT; S.M. AND V.M., BY S.M., HER ATTORNEY  
IN FACT, Appellants

v.

MISSOURI STATE FAMILY SUPPORT  
DIVISION AND ITS DIRECTOR, JANEL LUCK, Respondents

WD70994

Cole County

Before Division Four Judges: Thomas H. Newton, C.J., James M. Smart, Jr., and Cynthia L. Martin, JJ.

J.P., H.P.; D.S., R.S.; V.P., G.P.; and S.M., V.M. (the Couples) sought eligibility for long-term care benefits under Missouri's Medicaid program, MO HealthNet. The Couples were denied eligibility because the Missouri State Family Support Division (the Division) determined that the community spouse's ownership of an annuity prevented the institutionalized spouse from qualifying for assistance. The Couples sought declaratory and injunctive relief, alleging that the policy applied by the Division was in violation of state and federal law. The trial court denied their claims. At issue is whether a community spouse's income stream from a commercial annuity may be considered an available resource in determining an institutionalized spouse's eligibility for Medicaid assistance. The Couples appeal.

**REVERSED AND REMANDED**

**Division Four Holds:**

In July 2007 the Missouri Legislature amended section 208.212, which is part of Missouri's codification of its Medicaid plan. Prior to the 2007 amendment, when determining Medicaid eligibility, the Division treated annuities which paid income to a community spouse as excluded from a calculation of resources available to an institutionalized spouse, so long as the annuity met other statutory requirements. In November 2007, the Division began interpreting section 208.212 to exclude the income stream from an annuity as a resource only if the income was paid to the institutionalized spouse.

In their first point on appeal, the Couples argue that the Division's interpretation of the amended section 208.212 violates federal Medicaid law. When a state accepts federal Medicaid funds, it is required by both state and federal law to comply with federal statutes and regulations in administering the program. Our review of applicable federal statutes and case law shows that the Division's denial of Medicaid eligibility based on the community spouses' income from these annuities does not comply with existing federal Medicaid eligibility rules. Consequently, the policy cannot stand.

While the Division argues that its interpretation of section 208.212 was intended by the Missouri Legislature, we disagree. First, we cannot discern that the Division's reading has a

plausible rationale within the Medicaid scheme. Second, given Medicaid's dual concerns with protecting a community spouse from poverty, while at the same time barring couples from sheltering assets for their heirs, we find it more reasonable that the Missouri Legislature amended the statute in order to ensure that an excluded annuity could not pay another heir in the event of the community spouse's death. Finally, we find it unreasonable to imagine that the Missouri Legislature amended the statute in order to render it ineffectual through its conflict with federal law.

**Opinion by: Thomas H. Newton, Judge**

April 20, 2010

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**