

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI EX REL WASHINGTON UNIVERSITY
v.

Respondent

JESSICA RICHARDSON;
MISSOURI COMMISSION ON HUMAN RIGHTS

Appellant
Appellant

DOCKET NUMBER WD74907 & WD74993

DATE: February 5, 2013

Appeal From:

Circuit Court of Cole County, MO
The Honorable Daniel Richard Green, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., Joseph M. Ellis, and Gary D. Witt, JJ.

Attorneys:

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

STATE OF MISSOURI EX REL WASHINGTON UNIVERSITY,
Respondent, v. JESSICA RICHARDSON, Appellant; MISSOURI
COMMISSION ON HUMAN RIGHTS, Appellant

WD74907 & WD74993

Cole County

Before Division One Judges: Newton, P.J., Ellis, and Witt, JJ.

Richardson filed a complaint of sex discrimination with the MCHR against the University. She alleged that while a student in the University's graduate program, she was sexually harassed and verbally abused by her advisor until she left the program without graduating, and that the University retaliated against her for reporting the advisor's conduct. MCHR notified the University of the complaint. The University petitioned the circuit court for a writ of prohibition against the MCHR, contending that the agency had no jurisdiction over the complaint because the University was not a place of public accommodation under the Missouri Human Rights Act (MHRA). The trial court entered a preliminary writ. Richardson intervened and both she and the MCHR moved to quash the writ.

After a hearing, the trial court determined that the MCHR did not have jurisdiction over Richardson's complaint because the graduate program was not a place of public accommodation and ordered the MCHR to administratively close the complaint without issuing a right to sue letter. Richardson and the MCHR appeal.

REVERSED AND REMANDED.

Division One Holds:

In her sole point, Richardson argues that the trial court erred in granting the writ because the University is a place of public accommodation under the MHRA in that: (1) it receives public funds; and (2) it offers educational services to the public. In its first point, the MCHR argues that the trial court erred because Missouri law holds it can issue a right-to-sue letter at any time during the administrative process of a case. In its second point, the MCHR argues the trial court erred in finding the graduate program was not a place of public accommodation because the proper issue was whether the University was a place of public accommodation. We combine the parties' arguments where they overlap and discuss them out of order.

Section 213.065 mandates that all persons are entitled to the full and equal use and enjoyment of public accommodations within this state without discrimination. Sections 213.010 and 213.065 define public accommodation. At issue is whether the University was a "place of public accommodation" under these sections.

Richardson argues that the University is a place of public accommodation under subsection 213.010(15)(e) because it receives government funds. However, the plain language of that provision cannot support her argument because the University is not a public facility.

Richardson further argues that the University is a place of public accommodation under subsection 213.010(15) because the definition includes “all places or businesses offering or holding out to the general public” and the University offers or holds out its services to the general public. We agree. Although the University argues that it does not “offer” or “hold out” because selective criteria are used for admission, we believe that the University is describing the services delivered rather than offered.

The University additionally argues, and the trial court found, that even if it is a place of public accommodation, it is exempted by subsection 213.065.3, which excludes establishments “not in fact open to the public.” However, our case law has held that “public” includes a subset of the general public and has explicitly rejected the notion that instituting criteria for admission means an establishment that is otherwise a place of public accommodation is not in fact open to the public. Richardson’s point is granted.

Finally, as future guidance to the court, we address the MCHR’s first point. Section 213.111 mandates that the MCHR “shall issue” a right to sue letter when the MCHR has not completed its administrative processing within a certain timeframe and the complainant has made a written request. Without the letter, a claimant cannot bring a MHRA claim in circuit court. Here, however, the circuit court removed Ms. Richardson’s right to bring suit by ordering the MCHR to close her complaint without issuing a right to sue letter. Such a ruling is contrary to the statute. Section 213.111 clearly authorizes a separate civil action for damages that is not part of any administrative proceeding

For the foregoing reasons, the trial court’s judgment is reversed and remanded with directions to quash the writ of prohibition.

Opinion by Thomas H. Newton, Presiding Judge

February 5, 2013

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