

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

In re L.M.,	)	No. ED102342
	)	
	)	Appeal from the Circuit Court of
A Minor.	)	Ralls County, Missouri
	)	
	)	Honorable David C. Mobley
	)	
	)	Filed: May 3, 2016

Corey Miller (“Father”) appeals from the trial court’s judgment granting Respondents Troy Ritter (“Great-Uncle”) and Melinda Ritter’s (“Great-Aunt”) (collectively “Respondents”) petition for letters of guardianship and conservatorship of Father’s three-year-old son, L.M. (“Child”). Father raises two points on appeal: 1) that the trial court misapplied section 475.030.4(2), the applicable section of Missouri’s guardianship law; and 2) that the trial court’s finding that Father is unfit is not supported by substantial evidence and is against the weight of the evidence. Because we find that the trial court misapplied the law and that the judgment is unsupported by substantial evidence, we reverse and remand for proceedings consistent with this opinion.

REVERSED AND REMANDED.

DIVISION THREE HOLDS: The trial court erred in declaring and applying the law by considering Child’s best interests as between Father and Respondents before first determining whether Father was fit to be Child’s guardian. Further, the trial court’s conclusion that Father was unfit was erroneous because it was made in the context of comparing the relative merits of Father with those of Respondents and it was not supported by substantial evidence. Accordingly, the trial court’s judgment is reversed and remanded with instructions to dismiss the petition and order that Child be returned to Father’s custody with such custody to proceed pursuant to the judgment from the prior paternity action.

Opinion by: James M. Dowd, J.

Robert M. Clayton III, P.J. dissents in a separate opinion.

Lawrence E. Mooney, J. concurs.

Attorney for Appellant: Brian Daniel Sleeth

Attorney for Respondent: Michael Dean Holliday

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**