

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

MONTAGUE SIMMONS, et. al.,)	No. ED103304
)	
Appellants,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Joseph L. Walsh III
ROBERT MCCULLOCH,)	
)	
Respondent.)	FILED: May 31, 2016

Montague Simmons, Redditt Hudson, Juliette Jacobs, and Tara Thompson (collectively, "Appellants") appeal from the trial court's judgment granting St. Louis County Prosecuting Attorney Robert McCulloch's ("Respondent's") Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted. We affirm.

AFFIRMED

Division One Holds: The facts alleged by Appellants do not rise to the level to meet the elements required for a finding that Respondent either willfully or fraudulently violated or neglected an official duty, nor that he knowingly or willfully failed or refused to perform an official duty. Further, even if we had found more compelling evidence that Respondent had violated some official duty, the statute provides that the trial court "may" appoint a special prosecutor. While we hold that Respondent properly exercised his prosecutorial discretion, we further hold that the trial court was well within its discretion in deciding not to appoint a special prosecutor.

Opinion by: Roy L. Richter, J.

Robert G. Dowd, Jr., P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Maggie Ellinger-Locke

Attorney for Respondent: Linda S. Levin, Peter Krane

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.