

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

DAVID K. KUNZIE,	)	No. ED92974
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
v.	)	
	)	
JACK-IN-THE-BOX, INC.,	)	Honorable Colleen Dolan
	)	
Respondent.	)	Filed: March 9, 2010

David Kunzie (Appellant) appeals from the trial court's denial of his motion to set aside arbitration proceedings on the basis that the trial court erred in finding that a validly formed arbitration agreement existed between Appellant and his former employer, Jack-in-the Box, Inc. (Respondent).

Despite the existence of controverted facts as to whether Appellant signed the arbitration agreement, the trial court failed to conduct an evidentiary hearing. Instead, the trial court found that, by continuing his employment with Respondent with knowledge of Respondent's proposed arbitration agreement, Appellant accepted the arbitration agreement.

On appeal, Appellant argues that the alleged arbitration agreement lacked mutual assent.

#### REVERSED

Division Four Holds: Appellant's continued employment, without more, did not objectively manifest his intent to be bound to Respondent's proposed arbitration policy. Thus, the trial court's judgment is reversed and the cause remanded for an evidentiary hearing to determine if additional facts exist which, in conjunction with Appellant's continued employment, sufficiently demonstrate that Appellant accepted Respondent's arbitration policy to be a new condition of his employment.

Opinion by: Kurt S. Odenwald, P.J.  
George W. Draper III, J., Concurs and Gary M. Gaertner, Jr., Concurs in separate opinion

Attorney for Appellant: Donald K. Murano and Michael Waxenberg

Attorney for Respondent: James N. Foster, Jr. and Brian C. Hey

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