

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COLLINS F. KINDRED, ET AL.,

RESPONDENTS,

v.

CITY OF SMITHVILLE, MISSOURI,

APPELLANT.

**DOCKET NUMBER WD68831
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 21, 2009

**Appeal From:
CLAY COUNTY CIRCUIT COURT
THE HONORABLE JAMES EDWARD WELSH, JUDGE**

**Appellate Judges:
DIVISION THREE: HAROLD L. LOWENSTEIN, Presiding Judge, JOSEPH M.
ELLIS and LISA WHITE HARDWICK, Judges**

**Attorneys:
Bradley C. Nielsen, Esq., Kansas City, MO, for appellant.**

Jerome E. Brant, Esq., Liberty, MO, for respondent.

**MISSOURI APPELLATE COURT OPINION
SUMMARY**

COURT OF APPEALS -- WESTERN DISTRICT

COLLINS F. KINDRED, ET AL.,

RESPONDENTS,

v.

CITY OF SMITHVILLE, MISSOURI,

APPELLANT

WD68831

Clay County

Before Division Three Judges: Harold L. Lowenstein, Presiding Judge, Joseph M. Ellis and Lisa White Hardwick, Judges.

The City of Smithville appeals the circuit court's judgment ordering specific performance of an easement agreement between the City and Collins Kindred and Loula Kindred. The City contends the easement agreement was void *ab initio* and unenforceable because it did not comply with Section 432.070, RSMo 2000.

AFFIRMED.

Division Three holds: The easement agreement substantially complied with Section 432.070. It contained all of the essential elements of a valid deed. The underlying transaction, which was the granting of an easement in exchange for consideration, was not illegal or outside the scope of the City's powers. The agreement was made upon a consideration wholly to be

performed subsequent to the making of the contract. The terms of the agreement, including the consideration, were in writing, and the writing was dated when made. In light of the purpose of Section 432.070 and the type of contract the easement agreement is, the agreement's substantial compliance with the statute is sufficient to render it enforceable. We find no error in the judgment ordering specific performance of the easement agreement.

Opinion by: Lisa White Hardwick, Judge

July 21, 2009

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