

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

SHAUN P. KENNEY AND CHRISTEN D. SHEPHERD AND
CAROL PENCE AND MARK D. PENCE,

Respondents

v.

JOHN M. VANSITTERT,

Appellant

DOCKET NUMBER **WD69073**

DATE: December 2, 2008

Appeal From:

Circuit Court of Jackson County, MO
The Honorable John M. Torrence, Judge

Appellate Judges:

Division Four: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:

David R. Smith, Kansas City, MO

Counsel for Appellant

Sylvester James, Jr., Kansas City, MO
Scott A. Shachtman, Kansas City, MO

Counsel for Respondents
Co-Counsel for Respondents

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

SHAUN P. KENNEY AND CHRISTEN D. SHEPHERD AND
CAROL PENCE AND MARK D. PENCE, Respondents,

v.

JOHN M. VANSITTERT, Appellant

WD69073

Jackson County

Before Division Four Judges: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

After a street fight, Respondents sued Vansittert for their injuries and Vansittert counterclaimed. Partial summary judgment was entered on Vansittert's counterclaims. After negotiations, both sides filed motions to enforce their version of a settlement agreement. The circuit court found the parties had mutually agreed to release their claims. It ordered the parties to execute a mutual release and ordered all attorneys of record to sign a stipulation of dismissal. Vansittert appeals.

AFFIRMED IN PART AND VACATED IN PART.

Division Four holds:

On appeal, Vansittert offers several arguments. (1) He contends that the trial court should not have allowed his attorney of record in the underlying case, Schmitt, to testify to his understandings of the settlement terms because of attorney work-product privilege. Vansittert also argues that the parol evidence rule barred admission of evidence extrinsic to the document advanced by Vansittert as the parties' agreement. We find neither doctrine applied. Even assuming Schmitt's testimony was work-product, the doctrine is only a defense to discovery. Nor did the parol evidence rule preclude the admission of evidence because the document advanced by Vansittert was not completely integrated. (2) Vansittert further argues the evidence did not support that he agreed to release his counterclaims. However, Schmitt had a presumption of authority to settle Vansittert's counterclaim that Vansittert failed to rebut or invalidate and the evidence supported that Schmitt agreed to a release of Vansittert's counterclaims. (3) Additionally, Vansittert maintains that the trial court erred in ordering him to sign a mutual release and in ordering the attorneys of record to sign a stipulation of dismissal. Because the trial court did not err in finding a valid agreement between the parties to mutually release their claims, the trial court did not err in ordering Vansittert to execute a mutual release. However, the order to stipulate to a dismissal was improper. Consequently, we enter an order dismissing Vansittert's counterclaims. (4) Finally, Vansittert argues that summary judgment on his malicious prosecution counterclaim was improper because there were disputed issues of material fact; this point is moot.

Opinion by: Thomas H. Newton, Chief Judge

December 2, 2008

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