

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**JAMES D. HEIDBREDER, JANET OTKE, R.W. HEIDBREDER, THOMAS R.
BRANSTETTER AND KATHRYN J. BRANSTETTER, APPELLANTS,**

v.

JAMES R. TAMBKE D/B/A TAMBKE AUTO SALES, RESPONDENT.

DOCKET NUMBER WD69378

DATE: April 28, 2009

Appeal From:
COLE COUNTY CIRCUIT COURT
THE HONORABLE PATRICIA S. JOYCE, JUDGE

Appellate Judges:
Division Two: Joseph P. Dandurand, P.J., Harold L. Lowenstein and James M. Smart,
Jr., JJ.

Attorneys:
Ashley Webb, Kansas City, MO, **for appellant.**

Daniel R. Green, Jefferson City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

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JAMES D. HEIDBREDER, JANET OTKE, R.W. HEIDBREDER, THOMAS R. BRANSTETTER AND KATHRYN J. BRANSTETTER, APPELLANTS

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Donald Heidbreder died shortly after loaning James Tambke money. Tambke allegedly made two partial payments on the loan to Heidbreder's heirs. After being judicially determined to be Heidbreder's heirs at law, the heirs filed suit against Tambke seeking the balance owed on the loan. Tambke filed a motion to dismiss the suit, claiming that the heirs lacked standing and that the suit is barred by the statute of limitations. The trial court dismissed the action. Heidbreder's heirs appeal.

REVERSED AND REMANDED.

Division Two holds:

Nothing in section 473.663 purports to limit the types of property that may be subject to a 473.663 determination and, accordingly, if a person has been declared pursuant to section 473.663 to have an ownership interest in a chose in action as an heir of the deceased, the declared owner is entitled to pursue it and recover it.

Dismissal is improper where a petition alleges that a debtor made partial payments to the creditor's heirs that arguably would toll the statute of limitations so that the petition is timely because these payments could be construed as an acknowledgement that the debt was owed to the heirs and as an implied promise to pay the debt.

Opinion by: James M. Smart, Jr., Judge

April 28, 2009

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