

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ANGELA PHELPS AND LYNN DILL, APPELLANTS,
v.
CITY OF KANSAS CITY, MISSOURI, RESPONDENT;
NORTH KANSAS CITY SCHOOL DISTRICT, DEFENDANT.

DOCKET NUMBER WD69493

DATE: January 13, 2009

Appeal From:

Clay County Circuit Court
The Honorable Larry Dale Harman, Judge

Appellate Judges:

Division One: Ronald R. Holliger, Presiding Judge, Harold L. Lowenstein and Lisa White
Hardwick, Judges

Attorneys:

Patrick S. Cierpiot and Charlie Dickman, Kansas City, MO, for appellants.
Douglas McMillan, Kansas City, MO, for respondent.

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

ANGELA PHELPS AND LYNN DILL, APPELLANTS,
v.
CITY OF KANSAS CITY, MISSOURI, RESPONDENT;
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No. WD69493

Clay County

Before Division One Judges: Ronald R. Holliger, Presiding Judge, Harold L. Lowenstein and Lisa White Hardwick, Judges

Ten-year-old Christopher Dill drowned to death when he was sucked into a drainage ditch near his school. His parents sued the City of Kansas City and the North Kansas City School District, alleging that negligent maintenance of the sewage system caused Christopher's death. The City successfully moved to dismiss, on the basis that the petition failed to allege the necessary elements for waiver of its sovereign immunity. Specifically, the City contended that the City did not own the property in question. Phelps and Dill appeal.

REVERSED AND REMANDED.

Division One holds: Whether the City actually owned the property is not relevant to the propriety of a motion to dismiss for failure to state a claim upon which relief can be granted. Rather, the petition is sufficient if the essential elements of the cause of action, here including the fact of ownership, are alleged on its face. All essential elements were alleged here. Moreover, ownership of a fee simple interest in the property is not required for statutory waiver of sovereign immunity.

Opinion by: Ronald R. Holliger, Presiding Judge

Date: January 13, 2009

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