

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL. JEREMIAH W NIXON,
MISSOURI ATTORNEY GENERAL, APPELLANT,**

v.

RONALD SMITH, RESPONDENT.

DOCKET NUMBER WD69547

DATE: April 7, 2009

Appeal From:
COLE COUNTY CIRCUIT COURT
THE HONORABLE JON EDWARD BEETEM, JUDGE

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

Attorneys:
Shaun J. Mackelprang and Paul Harper, Jefferson City, MO, **for appellant.**

F. Randall Waltz, III, Jefferson City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

**STATE OF MISSOURI, EX REL. JEREMIAH W NIXON,
MISSOURI ATTORNEY GENERAL, APPELLANT**

v.

RONALD SMITH, RESPONDENT

WD69547

COLE COUNTY CIRCUIT COURT

The Attorney General filed a petition pursuant to the Missouri Incarceration Reimbursement Act (MIRA) seeking to recover money from Ronald Smith. In the ten months prior to filing, Smith had received deposits from a number of different persons into his inmate account totaling \$4,490.55. After review of the Division of Employment Security records of the identifiable persons who sent money, the Attorney General's staff concluded that Smith probably had an outside source of income being funneled to him. At the time of filing, Smith had \$1,800 in his inmate account. Smith filed a motion to dismiss, alleging that the Attorney General did not have "good cause" to file the petition. The trial court determined that the Attorney General lacked good cause to file the petition because the State could not reasonably have believed that it could recover at least \$3,000 from Smith within five years of filing. The Attorney General appeals.

REVERSED AND REMANDED.

Division Two Holds:

The Attorney General needed to demonstrate only a reasonable and good faith belief based on facts reasonably available to him that Smith had sufficient "assets" so that the State would, within five years, receive a total of \$3,000. At the time of filing, over \$4,400 had been deposited into his inmate account over the course of ten months.

Knowing that an offender has received \$4,400 over a period of ten months, \$2,400 of which came from people of limited means, a reasonable person could have a good faith belief that an offender has sufficient assets that the State would recover at least \$3,000 in five years from the action.

The trial court erred in determining as a matter of law that the Attorney General was required, before filing the action, to conduct additional investigative activities. The trial court also erred in determining that the Attorney General was required, before filing, to identify a specific asset that would be expected to produce the funds necessary to reach the statutory minimum amounts, and to identify the custodian of that asset. There is no evidence that the Attorney General proceeded in bad faith or that the Attorney General's

decision in this case was so clearly unreasonable in light of the pertinent purposes that we could say that there was a lack of "good cause."

Opinion by James M. Smart, Jr., Judge

April 7, 2009

This summary is **UNOFFICIAL** and
should not be quoted or cited
