

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**In re: GEORGE LEONARD KRAUS, Deceased,  
PATTY ANN DENTON,**

**Respondent,**

**v.**

**MISSOURI DEPARTMENT OF MENTAL HEALTH,**

**Appellant.**

---

**DOCKET NUMBER WD71327  
MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**Date: July 6, 2010**

---

Appeal from:  
Cole County Circuit Court  
The Honorable John E. Beetem, Judge

---

Appellate Judges:  
Division One: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

---

Attorneys:  
Jeff Klusmeier, Esq., Jefferson City, MO, for appellant.  
David A. Yarger, Esq., Versailles, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

In re: GEORGE LEONARD KRAUS, Deceased,  
PATTY ANN DENTON

Respondent,

v.

MISSOURI DEPARTMENT OF MENTAL HEALTH,

Appellant.

WD71327

Cole County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

The Missouri Department of Mental Health appeals an order entered in probate proceedings involving the Estate of George Leonard Kraus. Mr. Kraus passed away on August 26, 2008. On May 29, 2009, the Department filed its Claim Against Estate, alleging that the estate was liable to the Department for \$2,313.48, which the Department contends represents the unpaid cost of (unspecified) services provided to Mr. Kraus between August 27, 1985, and May 31, 1995.

On July 7, 2009, the Circuit Court of Cole County entered an order denying the Department's claim on the basis that it was time-barred under the applicable statute of limitations. On July 14, the Department filed a Motion to Set Aside Denial, reasserting its contention that its claim did not accrue until Mr. Kraus's death, and that it was not subject to the claim filing deadlines in the probate code. The circuit court denied the Department's Motion to Set Aside on July 21. The Department filed its Notice of Appeal on July 31, 2009.

**DISMISSED.**

**Division One holds:**

The probate division's denial of the Department's on July 7 was an appealable interlocutory order by virtue of §§ 472.160.1(1) and (13), RSMo.

Under § 472.180, such an appeal must be taken “within the time prescribed by the rules of civil procedure relating to appeals.” Rule 81.04(a) provides that a notice of appeal must be filed within 10 days of the finality of the judgment or order being appealed.

The probate division’s order denying the Department’s claim was final when it was entered on July 7. Although Rule 81.05(a) provides that the finality of judgments is delayed for 30 days, and for additional time if timely post-judgment motions are filed, Rule 81.05 is not applicable to the interlocutory probate orders made appealable under §§ 472.160.1(1) – (13). *Standley v. Standley (Estate of Standley)*, 204 S.W.3d 745, 749 n. 9 (Mo. App. S.D. 2006) (en banc).

Thus, in order to have properly appealed the circuit court’s denial of its claim on July 7, the Department was required to file a Notice of Appeal within ten days of that denial. It failed to do so. The Department accordingly waived its right to an immediate, interlocutory appeal of the trial court’s ruling. The interlocutory appeals authorized by §§ 472.160.1(1) – (13) are permissive rather than mandatory, however; the Department therefore retains the right to appeal the probate division’s denial of its claim following the entry of a judgment finally disposing of all claims by all parties in the probate proceeding.

Opinion by: **Alok Ahuja, Judge**

July 6, 2010

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**