

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DARREL W. MELSON, ET AL.**

**RESPONDENTS,**

**v.  
CARL T. TRAXLER, ET AL.**

**APPELLANTS.**

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DOCKET NUMBER WD72795

DATE: November 1, 2011

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Appeal From:

Boone County Circuit Court  
The Honorable Clifford E. Hamilton, Jr., Judge

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Appellate Judges:

Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Cynthia L. Martin,  
Judges

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Attorneys:

David L. Knight, Columbia, MO and Susan Ford Robertson, Kansas City, MO, for appellants.

John Hein, St. Louis, MO, for respondents.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DARREL W. MELSON, ET AL.,**

**RESPONDENTS,**

**v.**

**CARL T. TRAXLER, ET AL.,**

**APPELLANTS.**

No. WD72795

Boone County

Before Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Darrel and Mellony Melson (collectively "the Melsons") and First National Bank and Trust Company ("First National Bank") brought suit against Carl and Martha Traxler (collectively "the Traxlers") and David Knight ("Knight"). The Melsons and First National Bank contended that they had a vested right to have the Traxlers' deed of trust released from their property. The trial court entered summary judgment in favor of the Melsons and First National Bank. The Traxlers and Knight appeal, arguing that the trial court improperly granted summary judgment because the Melsons and First National Bank failed to establish that no material factual disputes existed or that judgment was appropriate as a matter of law.

**REVERSED AND REMANDED.**

**Division Two holds:**

(1) The Traxlers' recorded deed of trust on the Melson property existed at the time the Melsons purchased the land. Because the deed of trust was recorded, the Melsons purchased the property subject to the Traxlers' interest and were bound by the deed of trust's contents, including its release provision. The sole release provision provided that the deed of trust would be released upon full payment of the underlying note. The deed of trust contained no partial release provision so that the Melsons could not argue that they had a vested right to a partial release.

(2) The Traxlers' practice of partially releasing their deed of trust on parcels of the property that the obligor of the underlying note sold does not modify the plain language of the deed of trust regarding release. Under longstanding Missouri law, actions by the parties to a contract after its execution do not vary the terms of a contract; instead, the plain language will control. Further, the statute of frauds would prevent the Traxlers' deed of trust from being modified without a writing. There is no writing in the record that indicates that the Traxlers agreed to execute partial releases on their deed of trust.

**Opinion by: Cynthia L. Martin, Judge**

November 1, 2011

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