

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

IN THE MATTER OF THE CARE AND TREATMENT OF MICHAEL FOGLE,

Respondent

v.

CHRIS KOSTER, ATTORNEY GENERAL, STATE OF MISSOURI, AND
KEITH SCHAFER, DIRECTOR, MISSOURI DEPARTMENT OF MENTAL HEALTH.

Appellants

DOCKET NUMBER WD73815

DATE: August 28, 2012

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Kathleen A. Forsyth, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Thomas H. Newton, J., and Owens L. Hull, Sp. J.

Attorneys:

James Layton, Jefferson City, MO

Counsel for Appellants,

Attorneys:

Erika Eliason, Columbia, MO

Counsel for Respondent

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

IN THE MATTER OF THE CARE AND TREATMENT OF MICHAEL FOGLE, Respondent, v. CHRIS KOSTER, ATTORNEY GENERAL, STATE OF MISSOURI, AND KEITH SCHAFER, DIRECTOR, MISSOURI DEPARTMENT OF MENTAL HEALTH, Appellants

WD73815

Jackson County

Before Division Four Judges: Welsh, C.J., Newton, J., and Hull, Sp. J.

The State appeals the circuit court’s judgment placing special conditions on the Department of Mental Health for the commitment of Michael Fogle as a sexually violent predator. The State asserts that the court erred when: (1) it found that the State agreed to special conditions on Fogle’s confinement under the sexually violent predator law, contending that there was no evidence to support such a finding, (2) it ordered special conditions for Fogle’s confinement under the sexually violent predator law, contending that it had no constitutional authority to do so, (3) it ordered special conditions for Fogle’s confinement under the sexually violent predator law, contending that it had no statutory authority to do so, and (4) it ordered special conditions for Fogle’s confinement under the sexually violent predator law, contending that the particular special conditions ordered by the court were not supported by the evidence.

REVERSED AND REMANDED.

Division Four holds:

(1) The circuit court erred in imposing special conditions for Fogle’s confinement under the sexually violent predator law by concluding that the State agreed to special conditions. The circuit court’s finding is unsupported by the evidence.

(2) As the matter is reversed on other grounds, it is unnecessary to determine whether the circuit court had the constitutional authority to order special conditions for Fogle’s confinement under the sexually violent predator law.

(3) The circuit court erred in imposing special conditions for Fogle’s confinement under the sexually violent predator law. The court lacked the statutory authority to impose such special conditions on the Department of Mental Health.

(4) As the matter is reversed on other grounds, it is unnecessary to determine whether the particular special conditions ordered for Fogle’s confinement by the circuit court were supported by the evidence.

Opinion by James Edward Welsh, Chief Judge

August 28, 2012

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