

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

DAVID HERRON,

Appellant,

v.

CHARLES T. BARNARD, et al.,

Respondents.

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**DOCKET NUMBER WD74910**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** January 29, 2013

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Gregory B. Gillis, Judge

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**JUDGES**

Division Two: Hardwick, P.J., and Smart and Mitchell, JJ.

CONCURRING.

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**ATTORNEYS**

Donald P. Herron  
Shawnee Mission, KS

Attorney for Appellant,

David A. Jermann  
Kansas City, MO

Attorney for Respondents.

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

DAVID HERRON, )  
 )  
 ) Appellant, )  
v. ) OPINION FILED:  
 ) January 29, 2013  
CHARLES T. BARNARD, et al., )  
 )  
 ) Respondents. )

**WD74910**

**Jackson County**

**Before Division Two Judges:** Lisa White Hardwick, Presiding Judge, and James M. Smart, Jr., and Karen King Mitchell, Judges

David Herron appeals the judgment of the trial court denying, after a bench trial, his claims for conversion and replevin of various items of personal property that he had placed in office space leased from Charles Barnard by Herron's employer. Herron raises three claims on appeal, all arguing that the trial court's judgment was against the weight of the evidence. First, he argues that the evidence established meritorious claims for conversion and replevin of the property at issue. Second, he claims that Barnard failed to meet his burden to prove that the items at issue constituted fixtures, thereby becoming part of the leasehold to which Barnard was entitled. And third, he claims that Barnard failed to prove that Herron abandoned any of these items.

**AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

**Division Two holds:**

1. Based upon the uncontested evidence, Herron met his burden of proving conversion and replevin.
2. Barnard failed to meet his burden of demonstrating that the majority of the items at issue constituted fixtures insofar as he failed to meet the adaptation element of a fixtures analysis. The door and transom combination, however, did meet all three elements of a fixture; thus, the trial court's decision as to these items is affirmed.

3. Barnard failed to demonstrate not only that the remaining items constituted fixtures but also that Herron had abandoned any of these items insofar as Herron left them on the premises, believing he did so with Barnard's permission.
4. Because the evidence did not support a finding that Barnard met his burden of proof on either of his affirmative defenses, the trial court's judgment as to all items except the door and transom combination is reversed, and the cause is remanded for further proceedings to determine whether Herron is entitled to return of the property or damages, and if he's entitled to damages, in what amount.

**Opinion by: Karen King Mitchell, Judge**

January 29, 2013

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