

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

G.H., ET AL.,

Appellants

v.

ELI LILLY & CO. AND BRISTOL-MYERS SQUIBB CO.

Respondents

DOCKET NUMBER WD75942

DATE: August 13, 2013

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Charles Emmert Atwell, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Victor C. Howard, J., and Peggy Stevens McGraw, Sp. J.

Attorneys:

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

**G.H., ET AL., Appellants, v. ELI LILLY & CO. AND
BRISTOL-MYERS SQUIBB CO., Respondents**

WD75942

Jackson County

Before Division Four Judges: James Edward Welsh, C.J., Victor C. Howard, J., and Peggy Stevens McGraw, Sp. J.

The appellants in this case, along with numerous other claimants, entered into a confidential settlement agreement with Eli Lilly & Company and Bristol-Myers Squibb Company (the pharmaceutical companies) to settle all pending and future claims pertaining to the pharmaceutical companies' alleged negligence in enabling pharmacist Robert Courtney to dilute chemotherapy drugs. Several years after entering into the settlement agreement, Appellants filed with the circuit court a "Motion to Reopen Case, Void the Settlement and Releases, and Vacate Orders Affirming Awards of Special Master." With the motion to vacate, the appellants also filed a "Motion to Unseal," seeking an order unsealing the pleadings and exhibits, which included records involving the Courtney settlement agreement. The circuit court denied both of the motions, and the appellants appeal.

AFFIRMED.

Division Four holds:

(1) Pursuant to Rule 74.06(b)(4), a court may relieve a party from a final judgment or order if "the judgment is void." In the record before us, we find no writing, denominated "judgment" or "decree," signed by the judge, and the appellants point us to no such document or docket entry. Because there is no judgment to set aside in this case, we find that the circuit court did not err in denying the appellants' motion to vacate the circuit court's orders affirming the awards of the Special Master under Rule 74.06(b)(4). Moreover, once the appellants voluntarily dismissed their cases, there was nothing more the circuit court could do in these cases. Thus, to the extent that the appellants sought a declaration from the circuit court within the dismissed case that the settlement agreement that they entered into with the pharmaceutical companies was void because it was against Missouri Law and because it violated their rights to due process, the circuit court could take no further steps within these dismissed actions.

(2) The circuit court did not err in refusing to unseal the record in the motion to vacate proceeding. Given that the circuit court did not err in denying the appellants' motion to set aside the settlement agreement, the provision in the settlement agreement, where the appellants agreed to keep all matters related to the settlement "strictly confidential," remains valid and enforceable.

By signing the settlement agreement, the appellants agreed that all matters related to the settlement were to be kept confidential. The appellants, along with the pharmaceutical companies, therefore, essentially asked the circuit court to seal the record, and everyone proceeded with the matter with the record under seal. Hence, any error committed by the circuit court in sealing the record was invited by the parties' agreement to settle.

Opinion by: James Edward Welsh, Judge

August 13, 2013

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