

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE ESTATE OF SHIRLEY J. MERRIOTT, Deceased, CITIZENS-FARMERS
BANK OF COLE CAMP,**

Appellant,

v.

**THOMAS SIDNEY MERRIOTT, TIMOTHY SCOTT MERRIOTT and TAMRA SUE
MERRIOTT WILSON,**

Respondents.

DOCKET NUMBER WD76938

Date: August 19, 2014

Appeal from:
Morgan County Circuit Court
The Honorable Kevin P. Schehr, Judge

Appellate Judges:
Division One: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Karen King
Mitchell, Judges

Attorneys:
Kenneth O. McCutcheon, Jr., Versailles, MO and Richard L. Rollings, Jr., Camdenton,
MO, for appellant.
Tomas S. Merriott, Timothy Scott Merriott, and Tamra S. Merriott Wilson, Respondents
Pro Se, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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**THOMAS SIDNEY MERRIOTT, TIMOTHY SCOTT MERRIOTT and TAMRA SUE
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WD76938

Morgan County

Before Division One: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Karen King Mitchell, Judges

Citizens-Farmers Bank of Cole Camp ("Appellant") appeals from the probate court's judgment in an action for accounting pursuant to Section 461.300, RSMo Cum. Supp. 2013, against Thomas Merriott, Timothy Merriott, and Tamra Merriott Wilson (collectively, "Respondents"), who are the children and heirs of Shirley Merriott ("Merriott"). Appellant contends the probate court misapplied the law regarding the proper remedy for an accounting action under Section 461.300 when it ordered Respondents to sell Merriott's residence and give Appellant any sales proceeds remaining after the mortgage was paid. Appellant further contends the court erred in valuing the residence at the time of trial instead of at the time it was transferred to Respondents and in assigning a value to the residence that was not supported by substantial evidence.

REVERSED AND REMANDED.

Division One holds:

(1) The probate court misapplied the law in the remedy it ordered. Based upon the implicit language of Section 461.300 and case law, the proper remedy in Appellant's action for accounting under Section 461.300 was a money judgment in favor of Merriott's estate and against Respondents for the value of the recoverable transfers to the extent necessary to discharge Appellant's claim against the estate.

(2) The probate court erred in valuing Merriott's residence at the time of trial instead of at the time of Merriott's death. While Section 461.300 does not explicitly state the time for valuing recoverable transfers, the statutory language clearly implies that transfers should be valued at the time they are received, which is the date of the decedent's death. Other temporal provisions in the statute, as well as practical concerns, support this interpretation.

Opinion by: Lisa White Hardwick, Judge

August 19, 2014

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