

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

COMPLETE TITLE OF CASE

DAVID GORDON d/b/a GRANDMA'S OFFICE CATERING, et al.,

Appellants,

v.

THE CITY OF KANSAS CITY, MISSOURI,

Respondent.

DOCKET NUMBER WD77499

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 25, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Bryan E. Round, Judge

JUDGES

Division Three: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

ATTORNEYS

Brian Joseph Gordon and C. Joseph Barvick
Independence, MO

Attorneys for Appellants,

Stephen D. Walsh and Nikola Smith, Assistant City Attorneys
Kansas City, MO

Attorneys for Respondent.



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

DAVID GORDON d/b/a GRANDMA'S)
OFFICE CATERING, et al.,)
)
Appellants,)
v.) OPINION FILED:
) November 25, 2014
THE CITY OF KANSAS CITY,)
MISSOURI,)
)
Respondent.)

WD77499

Jackson County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Cynthia L. Martin and Gary D. Witt, Judges

David Gordon d/b/a Grandma's Office Catering and Grandma's Office Catering, LLC d/b/a Grandma's Office Catering (collectively "Gordon") appeal the circuit court's dismissal with prejudice of his petition for review of a decision of the City of Kansas City denying a refund of taxes paid. Gordon filed a petition for judicial review requesting relief under section 536.100. City filed a motion to dismiss for lack of subject matter jurisdiction, arguing that the City was not required to hold a hearing on the matter, meaning that it was subject only to non-contested case review under section 536.150. The circuit court dismissed with prejudice. Gordon appeals, arguing that the petition pled sufficient facts to state a claim for non-contested case review, and that the court had subject matter jurisdiction.

REVERSED AND REMANDED.

Division Three holds:

1. Circuit courts "have original jurisdiction over all cases and matters, civil and criminal." Mo. Const. art. V, § 14. The question of whether the City's determination is subject to contested or non-contested case review is a matter of the court's authority to grant relief, not subject matter jurisdiction. The circuit court had jurisdiction over the matter and erred in dismissing for lack of jurisdiction.

2. A motion to dismiss for failure to state a claim, which is how the parties agree the motion to dismiss should be treated, is solely a test of the adequacy of the petition, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.

3. Despite only explicitly citing sections 536.100 and 536.50 (an erroneous citation as no such statute exists), and despite the fact that section 536.100 provides for contested case review, the petition also requested, alternatively, a declaratory judgment—relief that is not available under contested case review, but is available under non-contested case review pursuant to section 536.150. Parties are allowed to plead for contested case or, in the alternative, non-contested case review. The facts pled here were sufficient to plead either.

Opinion by: Karen King Mitchell, Presiding Judge

November 25, 2014

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