

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STEVE AUSTIN,

Appellant

v.

JOHN SCHIRO, M.D.,

Respondent

DOCKET NUMBER WD78085

DATE: May 26, 2015

Appeal From:

Circuit Court of Clinton County, MO
The Honorable Richard Brent Elliott, Judge

Appellate Judges:

Division One
James Edward Welsh, P.J., Thomas H. Newton, and Karen King Mitchell, JJ.

Attorneys:

Jonathan McCoy, Kansas City, MO

Counsel for Appellant

Attorneys:

Lloyd Bandy, Jr., Kansas City, MO
Bradley Dowd, Kansas City, MO

Counsel for Respondent
Co-Counsel for Respondent

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

**STEVE AUSTIN, Appellant, v.
JOHN SCHIRO, M.D., Respondent**

WD78085

Clinton County

Before Division One Judges: Welsh, P.J., Newton, and Mitchell, JJ.

Steve Austin appeals the circuit court's judgment dismissing his medical negligence action against John Schiro, M.D., on the basis that Austin did not comply with section 538.225, which sets forth the requirements for an affidavit of merit to be filed in any action against a health care provider. Austin contends that the circuit court erred in dismissing his petition, in that he timely filed a motion for an extension of time to file the affidavit, established good cause for seeking an extension, and then filed his health care affidavit within ninety days of that motion.

Affirmed.

Division One holds:

Despite Austin's timely motion for an extension of time that set forth his "cause" for an extension, he did not present the motion to the court or obtain an order from the court granting the extension, as required by section 538.225. Absent such an order, Austin was required to file an affidavit within ninety days after his lawsuit was filed, and he did not do so. Section 538.225 "is clear and unambiguous" that if a statutorily adequate health care affidavit has not been timely filed, the circuit court must dismiss the cause without prejudice. *See Mayes v. St. Luke's Hosp. of Kansas City*, 430 S.W.3d 260, 271 (Mo. banc 2014). The judgment is affirmed.

Opinion by James Edward Welsh, Presiding Judge

May 26, 2015

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