

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

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**COMPLETE TITLE OF CASE**

LARRY JOHNSTON and GLORIA GAY JOHNSTON,

Respondents,

v.

LIVINGSTON COUNTY COMMISSION,

Appellant.

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**DOCKET NUMBER WD78197**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** June 9, 2015

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**APPEAL FROM**

The Circuit Court of Livingston County, Missouri  
The Honorable Daren L. Adkins, Judge

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**JUDGES**

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

CONCURRING.

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**ATTORNEYS**

Larry A. Johnston and Gloria G. Johnston  
Chillicothe, MO

Respondents, *pro se*,

Adam L. Warren, Livingston County Prosecuting Attorney  
Chillicothe, MO

Attorney for Appellant.

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3. A reviewing court may receive evidence only in very specific circumstances, and it must make specific findings in order to do so. In the absence of such findings, the receipt of evidence during review of a contested case is not allowed.
4. If the record of the administrative proceeding is inadequate to permit review, the circuit court should remand the matter back to the administrative agency for a rehearing of the evidence and preservation of the evidence for review.
5. Following a circuit court's decision in a contested case, the aggrieved party files the notice of appeal, but that party must also notify the appellate court of which party was aggrieved by the administrative body's decision. For it is the party that was aggrieved by the administrative decision that is to file the appellant's brief, regardless of whether that party prevailed in the circuit court, because we review the administrative decision and not the circuit court decision.
6. Here, because the circuit court received evidence, rather than reviewing the record made before the Commission, and it made none of the statutorily required findings for doing so, we vacate the court's judgment and remand for the circuit court to either review the existing record, or—if inadequate for review—remand the matter back to the Commission for rehearing and preservation of the evidence.

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

June 9, 2015

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