

SC91498

IN THE SUPREME COURT OF MISSOURI

**In Re the Marriage of:
ROBERT J. SIMPSON,**

Petitioner/Appellant,

v.

ROWENA A. SIMPSON,

Respondent.

**On Appeal from The Circuit Court of St. Louis County
Hon. Thomas J. Prebil, Circuit Judge
Cause No. 04FC-011541**

APPELLANT'S SUBSTITUTE BRIEF

**Edward D. Robertson, Jr., # 27183
Mary Doerhoff Winter # 38328
Anthony L. DeWitt # 41612
BARTIMUS, FRICKLETON,
ROBERTSON & GORNY, P.C.
715 Swifts Highway
Jefferson City, MO 65109
(573) 659-4454
(573) 659-4460 Fax**

**ATTORNEYS FOR PETITIONER/
APPELLANT**

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES.....	5
JURISDICTIONAL STATEMENT	7
STATEMENT OF FACTS.....	8
POINTS RELIED ON	11
ARGUMENT.....	12

I. THE TRIAL COURT ERRED IN OVERRULING ROBERT SIMPSON’S MOTION TO TERMINATE MAINTENANCE AND IN SUSTAINING ROWENA SIMPSON’S (N/K/A/ ROWENA BENNETT) MOTION TO DISMISS ROBERT SIMPSON’S MOTION TO TERMINATE MAINTENANCE FOLLOWING ROWENA SIMPSON’S REMARRIAGE BECAUSE § 452.370.3, RSMO (2000) CREATES A STATUTORY PRESUMPTION THAT MAINTENANCE TERMINATES UPON REMARRIAGE UNLESS THE SEPARATION AGREEMENT OTHERWISE EXPRESSLY STATES THAT MAINTENANCE CONTINUES AFTER REMARRIAGE IN THAT THE SEPARATION AGREEMENT BETWEEN ROBERT SIMPSON AND ROWENA SIMPSON (N/K/A/ ROWENA BENNETT) DID NOT EXPRESSLY STATE ANY AGREEMENT BETWEEN THE PARTIES THAT ROBERT SIMPSON’S

OBLIGATION TO PAY MAINTENANCE WOULD CONTINUE IF ROWENA
SIMPSON REMARRIED AND THE TESTIMONY OF ROBERT SIMPSON
CANNOT OVERCOME THE STATUTORY PRESUMPTION OF § 452.370. 3..... 12

Introduction to the Argument 13

Standard of Review 13

 A. Section 452.370.3 is Clear and Unambiguous 14

 B. The Marital Settlement and Separation Agreement is Silent on the Issue of
Continued Payment of Maintenance on Remarriage of the Recipient Spouse..... 14

 C. The Court’s Decree is Silent on the on the Issue of Continued Payment of
Maintenance on Remarriage of the Recipient Spouse..... 15

 D. Settled Missouri Law Holds that Where a Property Settlement Agreement and
the Trial Court’s Decree are Both Silent on the Issue of a Continued Obligation to
Pay Maintenance Following Remarriage, a Maintenance Obligation to a Remarried
Recipient Spouse Automatically Terminates..... 15

 E. Transcribed Oral Testimony is not “otherwise agreed in writing.” 17

 F. Section 452.270.3 Requires the Court to Deny any Weight to Robert Simpson’s
Testimony Because it is not a Written Agreement. 19

CONCLUSION 23

CERTIFICATE OF COMPLIANCE WITH RULE 84.06(C) 24

CERTIFICATE OF SERVICE 25

TABLE OF AUTHORITIES

Cases

Cates v. Cates, 819 S.W.2d 731 (Mo. banc 1991) passim

Clark v. Clark, 601 S.W.2d 614, 615 (Ky. App. 1980)..... 14

Glenn v. Snider, 852 S.W.2d 841, 843 (Mo. 1993)..... 16, 21

In re Marriage of Rea, 773 S.W.2d 230, 235 (Mo. Ct. App. 1989) 13, 17, 18

Maddick v. DeShon, 296 S.W.3d 519 (Mo. App. W.D. 2009) 21

Mika v. Mika, 728 S.W.2d 280, 285 (Mo. App. E.D. 1987) 16

Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. 1976) 13

Reeves v. Reeves, 890 S.W.2d 369, 372 (Mo.App. E.D.1994)..... 17

State ex rel. Igoe v. Bradford, 611 S.W.2d 343, 349 (Mo. App. 1980)..... 14, 21

Tucker v. Tucker, 124 S.W.3d 16, 19 (Mo.App. W.D.2004) 17

Unterreiner v. Unterreiner, 899 S.W.2d 596 (Mo. App. E.D. 1995)..... 17, 18

Statutes

§ 432.010, RSMo (2000) 22

§ 452.325, RSMo..... 19, 20

§ 452.325.1, RSMo 2000..... 19

§ 452.325.2 17, 19

§ 452.325.3 20

§ 452.370.3, RSMo (2000) passim

§ 453.370.3, RSMo..... 13

§ 474.010 and 474.320, RSMo (2000)..... 22

Other Authorities

Uniform Marriage and Divorce Act U.L.A. § 306..... 20

Uniform Marriage and Divorce Act U.L.A. § 316(b) 20

Uniform Marriage and Divorce Act U.L.A., § 301, et seq. (“U.L.A.”)..... 19

Constitutional Provisions

Art. V § 10..... 7

JURISDICTIONAL STATEMENT

This is an appeal from a final order and judgment overruling Appellant's Motion to Terminate Maintenance. Following a decision of the Court of Appeals, this Court granted transfer. Jurisdiction arises in this Court pursuant to Mo. Const. Art. V § 10.

STATEMENT OF FACTS

Robert and Rowena Simpson dissolved their marriage before Judge Thea Sherry on December 12, 2005. They presented the court with a Marital Settlement and Separation Agreement (“Separation Agreement”). The Court heard testimony, considered the Separation Agreement and found it not unconscionable. The Court also incorporated the Separation Agreement into its decree dissolving the marriage. (LF 55).

The Separation Agreement provided in part pertinent to this appeal:

VII. MAINTENANCE

Terms of Payment

The parties agree, after examining all relevant factors, including the situation of both parties at the present time, that it is reasonable for and Husband agrees to pay to Wife nonmodifiable maintenance in the sum of \$12,000 per month for a period of 15 years.

The payments shall be made in advance on the first day of each month with the first payment due on the first day of December, 2005 and the last payment due on the first day of November, 2020. The payments shall terminate prior to the expiration of said 15 year period only in the event of the death of either party.

(LF 19)(App. A-13).

At the hearing, Robert Simpson testified as follows:

Q. All right. You understand, as opposing counsel stated previously, the issues about maintenance?

A. Yes.

Q. And you agree to pay a set amount of money over a period of time?

A. Yes.

Q. And whether she gets remarried or not that doesn't change your obligation to make payments?

A. Right.

Q. And that the only way maintenance terminates is upon your death or her death?

A. Correct.

LF 58.

The trial court's judgment provided as follows:

SPOUSAL SUPPORT. Petitioner is ordered to pay Respondent per month the sum of \$12,000.00 as set forth in Exhibit 1 [the Separation Agreement]. Not subject to modification.

(LF 8).

Rowena Simpson remarried in St. Louis County. (LF 50). Robert Simpson filed his Motion to Terminate Maintenance. (LF 27). Rowena Bennett filed her Motion to Dismiss. (LF 51). The trial court, speaking through Judge Thomas Prebil, overruled Robert Simpson's Motion to Terminate Maintenance and sustained Rowena Bennett's Motion to Dismiss. (LF 94).

Robert Simpson filed a timely appeal.

POINTS RELIED ON

- I. THE TRIAL COURT ERRED IN OVERRULING ROBERT SIMPSON'S MOTION TO TERMINATE MAINTENANCE AND IN SUSTAINING ROWENA SIMPSON'S (N/K/A/ ROWENA BENNETT) MOTION TO DISMISS ROBERT SIMPSON'S MOTION TO TERMINATE MAINTENANCE FOLLOWING ROWENA SIMPSON'S REMARRIAGE BECAUSE § 452.370.3, RSMO (2000) CREATES A STATUTORY PRESUMPTION THAT MAINTENANCE TERMINATES UPON REMARRIAGE UNLESS THE SEPARATION AGREEMENT OTHERWISE EXPRESSLY STATES THAT MAINTENANCE CONTINUES AFTER REMARRIAGE IN THAT THE SEPARATION AGREEMENT BETWEEN ROBERT SIMPSON AND ROWENA SIMPSON (N/K/A/ ROWENA BENNETT) DID NOT EXPRESSLY STATE ANY AGREEMENT BETWEEN THE PARTIES THAT ROBERT SIMPSON'S OBLIGATION TO PAY MAINTENANCE WOULD CONTINUE IF ROWENA SIMPSON REMARRIED AND THE TESTIMONY OF ROBERT SIMPSON CANNOT OVERCOME THE STATUTORY PRESUMPTION OF § 452.370. 3.**

Cates v. Cates, 819 S.W.2d 731 (Mo. banc 1991)

Unterreiner v. Unterreiner, 899 S.W.2d 596 (Mo. App. E.D. 1995)

Maddick v. DeShon, 296 S.W.3d 519 (Mo. App. W.D. 2009)

ARGUMENT

- I. THE TRIAL COURT ERRED IN OVERRULING ROBERT SIMPSON'S MOTION TO TERMINATE MAINTENANCE AND IN SUSTAINING ROWENA SIMPSON'S (N/K/A/ ROWENA BENNETT) MOTION TO DISMISS ROBERT SIMPSON'S MOTION TO TERMINATE MAINTENANCE FOLLOWING ROWENA SIMPSON'S REMARRIAGE BECAUSE § 452.370.3, RSMO (2000) CREATES A STATUTORY PRESUMPTION THAT MAINTENANCE TERMINATES UPON REMARRIAGE UNLESS THE SEPARATION AGREEMENT OTHERWISE EXPRESSLY STATES THAT MAINTENANCE CONTINUES AFTER REMARRIAGE IN THAT THE SEPARATION AGREEMENT BETWEEN ROBERT SIMPSON AND ROWENA SIMPSON (N/K/A/ ROWENA BENNETT) DID NOT EXPRESSLY STATE ANY AGREEMENT BETWEEN THE PARTIES THAT ROBERT SIMPSON'S OBLIGATION TO PAY MAINTENANCE WOULD CONTINUE IF ROWENA SIMPSON REMARRIED AND THE TESTIMONY OF ROBERT SIMPSON CANNOT OVERCOME THE STATUTORY PRESUMPTION OF § 452.370. 3.**

Introduction to the Argument

This case boils down to a simple, straightforward question: Whether the transcribed oral testimony of Robert Simpson, who had agreed to pay his former wife \$12,000 per month for maintenance, is an *agreement in writing* sufficient to overcome the statutory presumption created by § 453.370.3 that maintenance terminates on the remarriage of the payee former spouse absent a written agreement to the contrary.

The Marital Settlement and Separation Agreement (“Settlement Agreement”) in this case contained a merger provision and was incorporated into the Court’s decree. No Missouri case holds that transcribed oral testimony constitutes an agreement in writing between dissolution parties who have a separation agreement containing a merger provision. Indeed, the only case that addresses that issue in the context of a written separation agreement containing a merger clause that is incorporated into a judicial dissolution decree holds that the fact “that [oral]... testimony at the dissolution hearing was transcribed on paper by the court reporter at a later date does not change the fact that [it] was oral evidence.” *In re Marriage of Rea*, 773 S.W.2d 230, 235 (Mo. Ct. App. 1989)(discussing nunc pro tunc). Said differently, oral testimony cannot alter a written instrument that recites that it contains the entire agreement between the parties.

Standard of Review

This is a judge-tried case.

The trial court’s application of the law to the undisputed facts is reviewed under the standard announced in *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976). “[T]he

decree or judgment of the trial court will be sustained by the appellate court ... unless it erroneously declares the law, or unless it erroneously applies the law. “ *Id.*

Robert Simpson contends that the trial court erroneously declared and erroneously applied the law.

A. Section 452.370.3 is Clear and Unambiguous

Section 452.370.3 provides:

Unless otherwise agreed in writing or expressly provided in the judgment, the obligation to pay future statutory maintenance is terminated upon ... the remarriage of the party receiving maintenance.

Id. The statute is clear and unambiguous. *See, e.g. Clark v. Clark*, 601 S.W.2d 614, 615 (Ky. App. 1980)(“The language of [the identically worded statute] is clear and unambiguous”). “If the provisions of a statute are express and unambiguous, the court is not at liberty to construe the language... because the court functions to enforce the law as it is written.” *State ex rel. Igoe v. Bradford*, 611 S.W.2d 343, 349 (Mo. App. 1980).

B. The Marital Settlement and Separation Agreement is Silent on the Issue of Continued Payment of Maintenance on Remarriage of the Recipient Spouse.

The Settlement Agreement provides in pertinent part:

VII. MAINTENANCE

Terms of Payment

The parties agree, after examining all relevant factors, including the situation of both parties at the present time, that it is reasonable for and Husband agrees to pay to Wife nonmodifiable maintenance in the sum of \$12,000 per month for a period of 15 years.

The payments shall be made in advance on the first day of each month with the first payment due on the first day of December, 2005 and the last payment due on the first day of November, 2020. The payments shall terminate prior to the expiration of said 15 year period only in the event of the death of either party.

(LF 19)(App. A-13).

The Separation Agreement is silent on the issue of the continued payment of maintenance following remarriage.

C. The Court's Decree is Silent on the on the Issue of Continued Payment of Maintenance on Remarriage of the Recipient Spouse.

The trial court's decree found the Separation Agreement not unconscionable. That court's decree incorporated the Separation Agreement. The decree did not alter the language of the Separation Agreement in any way. Thus, the decree, like the Separation Agreement, was silent on the issue of the continued payment of maintenance following remarriage.

D. Settled Missouri Law Holds that Where a Property Settlement Agreement and the Trial Court's Decree are Both Silent on the Issue

**of a Continued Obligation to Pay Maintenance Following Remarriage,
a Maintenance Obligation to a Remarried Recipient Spouse
Automatically Terminates.**

This Court decided *Cates v. Cates*, 819 S.W.2d 731 (Mo. banc 1991), to resolve conflicting appellate decisions concerning the obligation of a paying spouse to continue to make maintenance payments upon remarriage of a former spouse who is still receiving maintenance payments. *Mika v. Mika*, 728 S.W.2d 280, 285 (Mo. App. E.D. 1987) held that an agreement to pay maintenance for a ten year period did not terminate on remarriage, but continued for ten years. *Cates*, as decided by the Southern District, held that remarriage terminated an existing maintenance obligation absent a written agreement to the contrary.

On transfer, this Court unanimously held that § 452.370.3 (formerly § 452.370.2) meant what it said.

[C]ourts will determine the continued obligation of the paying party to pay maintenance following remarriage or death upon the language (or silence) of the separation agreement or the court's decree.

Cates v. Cates, 819 S.W.2d 731, 738 (Mo. 1991). Myriad cases have followed *Cates*' teaching since 1991. See, e.g, *Glenn v. Snider*, 852 S.W.2d 841, 843 (Mo. 1993)(because the decree and separation agreement did not address the effect of remarriage, the statute should control and the payments should terminate); *Estate of Mackie*, 261 S.W.3d 728, 731 (Mo.App. W.D.2008)(“To rebut the presumption of termination, the

parties must clearly and expressly state in writing or the court's dissolution decree must expressly state that the obligation to pay future statutory maintenance extends beyond the death of either party”); *Tucker v. Tucker*, 124 S.W.3d 16, 19 (Mo.App. W.D.2004) (holding presumption unrebutted where decree did not “expressly provide that the maintenance obligation was to survive Laurie's remarriage”). *Reeves v. Reeves*, 890 S.W.2d 369, 372 (Mo.App. E.D.1994) (“Where the decree and separation agreement are silent with respect to the effect of remarriage on the maintenance obligation, no further inquiry into the intent of the parties concerning maintenance is permitted; the statute controls and the obligation is terminated”).

These holdings are consistent with – are indeed required by – the unambiguous statutory mandate that the terms of a Separation Agreement “are binding upon the court” if the trial court finds the Separation Agreement not unconscionable. § 452.325.2. The trial court so found here.

E. Transcribed Oral Testimony is not “otherwise agreed in writing.”

Transcribed oral testimony is not a written agreement sufficient to overcome a merger clause in a written separation agreement. “[T]hat [oral]... testimony at the dissolution hearing was transcribed on paper by the court reporter at a later date does not change the fact that [it] was oral evidence.” *In re Marriage of Rea*, 773 S.W.2d 230, 235 (Mo. Ct. App. 1989)(discussing *nunc pro tunc*).

Such testimony is certainly not an agreement meant to amend the Separation Agreement. *Unterreiner v. Unterreiner*, 899 S.W.2d 596 (Mo. App. E.D. 1995) makes

this point. There, the parties to a dissolution action made an *oral* agreement to divide their property and provide for maintenance of the wife. Their testimony at trial became the basis for the trial court's decree, which attempted to put into writing the parties' oral testimony. When the husband died, his estate sought to terminate maintenance. The Eastern District concluded that because there had been no written separation agreement, the trial court's decree rested entirely on testimony at trial. Because that testimony indicated an agreement to continue maintenance for five years under any and every circumstance, the decree had not properly reflected the parties' intent. Thus *nunc pro tunc* was proper to amend the decree to require that maintenance continue following the death of the payor. And because the decree, once corrected, expressly stated that maintenance would continue even on the death of the payor, § 452.370.3 did not require termination of maintenance on death.

Unterreiner was careful to distinguish *Rea*, however, precisely because *Rea* involved a written separation agreement that contained a merger clause.

In *Rea*, the court's rendered judgment was embodied by a signed, written agreement of the parties that, by its terms, was a complete declaration of the dissolution agreement and was modifiable only in writing. The testimony offered by wife in the hearing transcript, therefore, was not properly a part of the rendered judgment, and it was parol to a writing setting out the entire understanding of the agreement that was not modifiable except in writing.

Excluding the transcript as a basis for an order *nunc pro tunc* was proper.

Unterreiner, 899 S.W.2d at 599.

The Separation Agreement here contains an express merger clause.

This document constitutes the entire agreement between the parties. The parties acknowledge that **no promises, agreements, representations or inducements have been made by anyone which are not expressly contained herein.**

(LF 24)(emphasis added).

The hearing testimony of Robert Simpson is parol evidence that cannot be used to amend this written Separation Agreement that contains a merger clause.

F. Section 452.270.3 Requires the Court to Deny any Weight to Robert Simpson's Testimony Because it is not a Written Agreement.

There is no common law of divorce. *Cates*, 819 S.W.2d at 734. A dissolution of marriage action is purely a creature of statute.

The Missouri Dissolution of Marriage law is modeled after the Uniform Marriage and Divorce Act U.L.A., § 301, et seq. ("U.L.A.") In particular, § 306 became § 452.325, RSMo. That section authorizes a "written separation agreement." § 452.325.1, RSMo 2000. It decrees that the terms of such agreements "are binding upon the court" unless the court finds the agreement "unconscionable." § 452.325.2. The trial court's only option under the statute is to approve the agreement as "not unconscionable" or to find that it is "unconscionable" and order that it be modified to resolve the court's

concerns or, failing that, to make its own division of property. § 452.325.3. According to the U.L.A. comments, statutory provisions allowing for a separation agreement are designed to “encourage the parties to reach an amicable disposition of the financial and other incidents of their marriage.” U.L.A. § 306, *Comment*. Further, “if the court finds the agreement not unconscionable, its terms respecting property division and maintenance may not be altered by the court at the hearing.” *Id.*

It is clear that the only agreement to which the U.L.A. and the Missouri Dissolution of Marriage Law can refer is the “written separation agreement” which § 452.325 expressly allows. The whole of that law allows for only two ways in which property and maintenance can be distributed upon dissolution – either via a binding, court-approved separation agreement or by a judicial decree. *Id.* It is for this reason that *Cates* carefully noted that there were only two sources to which a court can turn to determine this issue. “[C]ourts will determine the continued obligation of the paying party to pay maintenance following remarriage or death upon the language (or silence) **of the separation agreement** or the court's decree.” *Cates*, 819 S.W.2d at 738 (emphasis added).

U.L.A. § 316(b) became § 452.370.3. That section dictates the manner in which courts must read (and parties drafting separation agreements must expect courts to read) those agreements. Section 452.370.3 states a default position: If a separation agreement is silent on the issue of continued payment of maintenance following remarriage, maintenance terminates.

Courts can only act in conformity with limits placed on them by the legislature. Said differently, this Court is obligated to enforce the statute as written. *Bradford*, 611 S.W.2d at 349. *Cates* so held.

The statutes relating to dissolution of marriage, Sections 452.300–420, RSMo 1986, thus dictate the nature of the action, its breadth, the authority of the parties to agree, or the court to order, property settlement and support obligations and the manner in which decrees and agreements entered under the statute will be interpreted.

Cates 819 S.W.2d at 734.

Section 452.370.3 does not allow for deviation in its effect even if a separation agreement is ambiguous, or silent on the issue, or even if the separation agreement otherwise permits inferences that reasonably could be read to require continued payment following remarriage. “Because the decree and separation agreement did not address the effect of remarriage, this Court ... concluded that the statute should control and that the payments should terminate.” *Glenn*, 852 S.W.2d at 843 (emphasis added)(discussing *Cates*.) As *Glenn* correctly noted, silence in the agreement is fatal to any hope for continued payment of maintenance upon remarriage.

Maddick v. DeShon, 296 S.W.3d 519 (Mo. App. W.D. 2009), properly understands the strength of the statutory presumption, defeating a joint stipulation that created an inference in favor of continued maintenance following remarriage. There, the parties

filed a joint stipulation following entry of the judgment. The stipulation struck the language of the separation agreement expressly providing that remarriage would terminate maintenance. This left the agreement silent on the issue of payment of maintenance following remarriage. Moreover, the trial court's modified judgment also was silent on that issue, decreeing that only two events – death of either party or payment of maintenance for seven years – could terminate the maintenance obligation. The Court ruled that silence in the agreement and in the decree brought the maintenance payment issue under the statutory presumption. Based on that silence, the Court held that the maintenance terminated on remarriage.

As a matter of policy, courts are not permitted to rescue parties from failure to follow clear, statutory guidelines and rules. This rule is steadfastly followed in other contexts. For example, the law does not permit parties to escape the effects of the expiration of a statute of limitations. The law requires that wills follow statutory mandates to establish authenticity before a will can overcome the statutory rules on intestate success. §§ 474.010 and 474.320, RSMo (2000). The Statute of Frauds requires that certain agreements be in writing or become voidable. § 432.010, RSMo (2000). Similarly, a separation agreement that is authorized, and therefore controlled, by statute, should be treated no differently.

This dissolution took place in 2005, nearly one and a half decades after this Court decided *Cates*. In fact, *Cates* anticipated this situation, issuing this word of warning to go attorneys of the consequences of their failure to follow the clear language of the statute. “Given the unambiguous language of Section 452.370.[3], it is difficult to imagine that

the careful drafter would fail to state the intent of the parties when failure to do so results in termination of maintenance.” *Cates* 819 S.W.2d at 738.

CONCLUSION

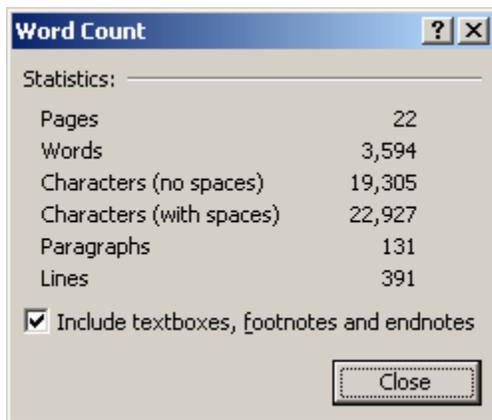
The Separation Agreement here failed to say what the statute requires it to say to achieve what the recipient of the maintenance now seeks—continued payments to her after remarriage. As a result, by operation of § 452.370.3, maintenance to the former Mrs. Simpson automatically terminated with her remarriage.

Respectfully Submitted,

Edward D. Robertson, Jr., # 27183
Mary Doerhoff Winter # 38328
Anthony L. DeWitt # 41612
BARTIMUS, FRICKLETON, ROBERTSON &
GORNLY, P.C.
715 Swifts Highway
Jefferson City, MO 65109
573-659-4454
573-659-4460 Fax

CERTIFICATE OF COMPLIANCE WITH RULE 84.06(C)

Undersigned counsel hereby certifies that this brief complies with the requirements of Missouri Rule 84.06(c) in that beginning with the Table of Contents and concluding with the last sentence before the signature block the brief contains 3,594 words. The word count was derived from Microsoft Word.



Disks were prepared using AVG Anti-Virus and were scanned and certified as virus free.

Respectfully submitted,

Edward D. Robertson, Jr. #27183
Anthony L. DeWitt, # 41612
BARTIMUS, FRICKLETON, ROBERTSON & GORNY,
P.C.
715 Swifts Highway
Jefferson City, MO 65109
(573) 659-4454 (office)
(573) 659-4460 (fax)

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and accurate copy of the foregoing document (two copies and disk) was served via prepaid United States mail on this 15th day of June, 2011, to the following:

Joyce Capshaw
James P. Carmody
Carmody MacDonald, PC
120 S. Central, Ste. 1800
St. Louis, MO 63105
314-854-8660
