

**MISSOURI COURT OF APPEALS--WESTERN DISTRICT  
DIVISION TWO  
MARK D. PFEIFFER, PRESIDING JUDGE  
ALOK AHUJA, JUDGE  
THOMAS N. CHAPMAN, JUDGE  
NOVEMBER 9, 2023  
WESTMINSTER COLLEGE  
FULTON, MISSOURI**

**WD85767**

**State of Missouri, Respondent,**

**v.**

**Jason Scott Klein, Appellant.**

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Appellant Jason Klein appeals the judgment of the Circuit Court of Pettis County finding him guilty of Class D felony possession of a controlled substance and Class E felony resisting arrest. The facts as alleged at trial were that a Pettis County Sheriff's Officer initiated a traffic stop of Klein's vehicle for inoperable front headlights. Klien's vehicle had a faulty heater that blew full heat even when the vehicle was off. When the stop began, Klein asked permission to exit the vehicle and turn off the heat by disabling the heater under the vehicle's hood. The officer gave Klien permission. The officer asked Klien's permission to conduct a pat-down of Klien after he had disabled the heater. The officer testified that the pat-down was warranted because he observed Klein's left pupil to be constricted, an artery was pulsing in Klien's neck, and Klien was sweating. Klein consented to the pat-down. During the pat-down, the officer allegedly attempted to put his hand into Klein's pocket. Klein told the officer that if he wanted to reach into his pocket he would need a warrant. The officer continued to reach into Klien's pocket. At that point, the officer attempted to physically detain Klien, and there was a scuffle. Klien was ultimately handcuffed and placed on the ground. Eventually, a complete search of Klien was conducted, and a baggie with a white crystal substance as well as an uncapped needle were found in Klien's jacket pocket. The crystal substance was tested and determined to be methamphetamine. Klien was charged with the Class C felony of trafficking drugs in the second-degree and the Class E felony of resisting arrest. Following a bench trial, Klien was found guilty of the lesser included offense of Class D felony possession of a controlled substance and the Class E felony of resisting arrest. The Court sentenced him to a total of ten years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court clearly erred in denying, after a suppression hearing, Mr. Klein's motion to suppress evidence and in admitting physical evidence of the laboratory report and manila envelope over defense counsel's objection at trial because the evidence was obtained in violation of Mr. Klein's rights to freedom from unreasonable search and seizure, due process of law, and fair trial under U.S. Const., Amends., IV, V, VI and XIV, and Mo. Const., Art. I, §§ 10, 14, and 15, in that the officer exceeded the scope of *Terry v. Ohio* by attempting to reach into Mr. Klein's

- pocket when Mr. Klein only consented to a pat-down, and that illegally seized evidence was subsequently received into evidence during the bench trial over defense counsel's objection.
2. The trial court clearly erred in finding Mr. Klein guilty and convicting him of possession of a controlled substance, § 579.015, RSMo, (Count I) because the laboratory drug testing methods used by the Missouri State Highway Patrol Crime Laboratory ("MSHP") are unreliable, in that the laboratory conducted a standard Gas Chromatograph-Mass Spectrometer ("GC/MS") test, but failed to conduct the necessary additional derivatization test to determine the chiral composition of the methamphetamine due to the chemical similarities and minor chiral differences between D-enantiomer and L-enantiomer methamphetamine.
  3. The trial court clearly erred in denying, after a suppression hearing, Mr. Klein's motion to suppress evidence and in admitting physical evidence of the laboratory report and manila envelope over defense counsel's objection at trial because the evidence was obtained in violation of Mr. Klein's rights to freedom from unreasonable search and seizure, due process of law, and fair trial under U.S. Const., Amends., IV, V, VI and XIV, and Mo. Const., Art. I, §§ 10, 14, and 15, in that the officer exceeded the scope of *Terry v. Ohio* by attempting to reach into Mr. Klein's pocket when Mr. Klein only consented to a pat-down, and that illegally seized evidence was subsequently received into evidence during the bench trial over defense counsel's objection.

**WD85799**

**Eric Qualls, Respondent,**

**v.**

**Missouri House of Representatives and Daniel Adam Crumbliss, Appellants.**

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Appellants Missouri House of Representatives and Daniel Crumbliss appeal from the judgment of the Circuit Court of Cole County finding that Respondent Eric Qualls's disability was a contributing factor in his termination from employment. As alleged at trial, Qualls was employed by the Missouri House of Representatives ("House") as a legislative analyst. He was responsible for drafting bill summaries, attending committee meetings, and managing amendments made to bills on the House floor. According to testimony, punctuality and meeting deadlines was extremely important in Qualls's position. Qualls's superiors voiced concerns to Qualls that he was not punctual to committee meetings and was missing deadlines or failing to complete assigned tasks. Qualls had a number of meetings with his superiors about his job performance before he informed his superiors that he suffered from anxiety and requested an accommodation. He also later disclosed that he suffered from Attention Deficit Disorder. A meeting was scheduled with a number of Qualls's superiors, including Crumbliss, to discuss Qualls's job performance and potential accommodations. At that meeting, the parties discussed possible accommodations but, according to testimony, the tone shifted when Qualls's job performance was discussed. Qualls allegedly refused to engage in any conversations regarding his performance and laughed at Crumbliss. Crumbliss informed Qualls that his attitude during

the meeting was problematic, and Qualls asked if that was a “threat to employment.” The tone of the meeting escalated, Qualls allegedly became argumentative, and Crumbliss terminated Qualls during the meeting. Qualls indicated that he would be filing a lawsuit. A jury found that Qualls’s disability was a contributing factor in his termination. This appeal followed.

Appellants’ points on appeal:

1. The trial court erred in denying Appellants’ motion for judgment notwithstanding the verdict because Respondent failed to show that he was disabled under the Missouri Human Rights Act in that (1) he was unable to perform the essential functions of his job with or without an accommodation and he was therefore not “disabled” under the Missouri Human Rights Act; and (2) none of the accommodations suggested by Respondent at trial would have aided in his ability to perform the essential functions of the job.
2. The trial court erred in denying Appellants’ motion for judgment notwithstanding the verdict on Respondent’s claim of retaliation because Respondent failed to make a submissible case of retaliation in that Respondent did not engage in a protected activity.

**WD85942**

**In Re: J.A.F., Juvenile; Juvenile Officer, Respondent; Department of Social Services, Children’s Division, Respondent,**

**v.**

**J.J.J.F., Appellant.**

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Appellant J.J.J.F. (“Father”) appeals the judgment of the Circuit Court of Boone County placing his child, J.A.F., with foster parents. In 2020, when the child was three years old, the Juvenile Officer of Boone County filed a petition alleging that the child was in need of care and treatment. The petition alleged that Father was incarcerated and that Mother had a history of substance abuse and was unable to provide acceptable living conditions for the child. The child was placed with foster parents in September 2020. As alleged by Father, no members of his family were contacted as possible placement options. On January 20, 2021, the child’s paternal aunt and uncle (“Aunt and Uncle”) sought to intervene. On November 9, 2021, the child’s paternal grandparents (“Grandparents”) sought to intervene and, on February 18, 2022, also filed a motion for family placement. The circuit court entered an order finding that it was in the best interest of the child to maintain his placement with the foster parents and changing placement to Grandparents or Aunt and Uncle was not in the child’s best interest. Father appealed.

Appellant’s points on appeal:

1. The trial court erred in finding that it is in the juvenile’s best interest to change placement of the juvenile to placement with the foster parents because as a matter of law the court must find the placement of the juvenile with the grandparents is contrary to the best interests of the juvenile prior to changing placement of the juvenile to placement with foster parents pursuant to section 210.565, RSMo, in that the holding of the court does

not make any findings that placement with grandparents is contrary to the best interest of the juvenile prior to ordering a change in placement to placement with the foster family.

2. The trial court erred in holding that it is in the best interest of the juvenile to change his placement to placement with the foster parents because no substantial evidence supports placement with the foster parents over placement with the juvenile's grandparents in that no evidence showed placement with the grandparents or other relatives would be contrary to the best interest of the juvenile prior to the court ordering a change in placement to placement with the foster family.
3. The trial court erred in holding that it is in the best interest of the juvenile to change his placement to placement with the foster parents because ordering the juvenile to be placed with the foster parents instead of the juvenile's grandparents is against the weight of the evidence in that the evidence, when taken in its entirety, shows the care of the juvenile with the grandparents would be in the juvenile's best interest, in light of section 210.565, RSMo, mandating preference be given to the grandparents or other relatives.
4. The trial court erred in relying on the juvenile's connection and bond with the juvenile's foster parents to determine that placement of the juvenile should change to placement with his foster parents because as a matter of law the children's division should have placed the juvenile with the grandparents or other relatives instead of the foster parents and such bond should have never occurred under the law in that juvenile's grandparents and other family members alerted children's division of the desire to have the juvenile placed with them and had the children's division followed the statutory guidance requiring preference of grandparents and other family members, no such bond would have occurred.

**WD86108**

**Sandra Potts, et al., Appellants,**

**v.**

**The Arthur Burger Trust, et al., Respondents.**

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Appellants Sandra Potts and Zachary Whitson (collectively "Appellants") appeal the judgment of the Circuit Court of Cooper County denying their Rule 74.06(b) motion for relief from the judgment entered against them in their underlying action to quiet title to disputed land. The Appellants and Respondents Arthur Burger and Arthur Burger Trust (collectively "Respondents") disputed ownership of 11 acres of land. After Arthur Burger showed a deed to Sandra Potts, Appellants filed suit to quiet title on the land by adverse possession. A jury returned a verdict for Respondents, and a judgment was entered in accordance with that verdict. After the entry of the judgment, Appellants hired a surveyor to review the issue. Appellants allege that they learned from the surveyor that evidence in the title history indicated that deed discrepancies had been identified in approximately 1919 and that, in 1919, affidavits were filed relating to possession and use of the land. Following this discovery, Appellants filed the motion to set aside the judgment pursuant to Rule 74.06(b) alleging that the judgment should be set aside because there were mutual mistakes of fact by both parties and that it is no longer equitable for the judgment to remain in force. The circuit court denied the motion. This appeal followed.

Appellants' points on appeal:

1. The trial court erred by abusing its discretion in refusing to set the underlying judgment aside on the ground that there was no mutual mistake about the discrepancies in the deeds and the 1919 Affidavits, because the court erroneously declared and applied the law by ruling that “[m]istake is mutual if the opposing party knows of the mistake” and concluding that there was no mutual mistake since there was “no evidence that defendants knew of a mistake,” basing its ruling on language that it took out of context from a dissenting opinion in an inapposite case, in that a mistake can be mutual if both parties are mistaken, not just if one party is mistaken and the opposing party knows of the mistake.
2. The trial court erred by abusing its discretion in refusing to set the underlying judgment aside based on its finding that there was no mutual mistake about the discrepancies in the deeds and the 1919 Affidavits since Appellants “had lawyers that could have explained it all” to them, because the court erroneously declared and applied the law by ruling that the lawyer’s failure to explain the significance of the deeds and the 1919 Affidavits constitutes Appellants’ neglect, in that Appellants’ reliance on the care and vigilance of their lawyer was at most excusable neglect for purposes of setting aside a judgment under Rule 74.06(b).
3. The trial court erred by abusing its discretion in refusing to set the underlying judgment aside based on its finding that “the newly found evidence was available to the plaintiffs” and therefore that “[t]his is not a mistake of fact” but “discovery of new evidence that plaintiffs present after trial,” because whether a mistake of fact exists has nothing to do with whether a party had the ability to investigate and could and should have found the evidence, in that a mistake is “an erroneous mental condition, conception, or conviction, induced by ignorance, misapprehension, or misunderstanding of the truth, but without negligence, and resulting in some act or omission done or suffered erroneously by one or both the parties to a transaction, but without its erroneous character being intended or known at the time.”
4. The trial court erred by abusing its discretion in refusing to set the underlying judgment aside based on its finding that “the evidence was available to the plaintiffs” and therefore that “[t]his is not a mistake of fact” but “discovery of new evidence that plaintiffs present after trial,” because the judgment is unsupported by the evidence, in that the only evidence was that neither Appellants nor Burger had actual knowledge of the discrepancies in the deeds and the 1919 Affidavits until after the entry of the underlying judgment.
5. To the extent that the judgment might be interpreted to rule that there was no admissible evidence that would change the result in a new trial, the court abused its discretion in refusing to set the judgment aside, because the trial court erroneously ruled that the 1919 Affidavits would not be admissible in a new trial, in that both §§ 490.410, 490.420, and 490.500, RSMo, and the ancient documents rule make the 1919 Affidavits admissible.