IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

TAUSHA FIELDS,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD83230

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: May 25, 2021

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable J. Hasbrouck Jacobs, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ahuja and Mitchell, JJ. CONCURRING.

ATTORNEYS

James W. Schottel, Jr., St. Louis, MO, Attorney for Appellant.

Eric S. Schmitt, Attorney General, and Shaun J. Mackelprang, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TAUSHA FIELDS, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD83230 **Boone County**

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

Following a jury trial, Ms. Tausha Fields ("Fields") was convicted of murder in the first degree and armed criminal action. Fields later filed an untimely Rule 29.15 post-conviction relief motion in which she alleged ineffective assistance of counsel and timeliness based on the active interference exception. After an earlier appeal had resulted in a remand for an opportunity for Fields to prove her allegations relating to the active interference exception to the timely filing of her Rule 29.15 motion, Fields presented no such evidence and the circuit court dismissed her Rule 29.15 motion as untimely. Fields appealed.

AFFIRMED.

Division Two holds:

1. In a motion filed pursuant to Rule 29.15, the movant must not only allege facts establishing that the motion is timely filed, but the movant must thereafter prove that the motion is timely by a preponderance of the evidence. A movant may meet this burden by alleging and proving that movant falls within a recognized exception to the time limits. Fields sufficiently *alleged* timeliness under the active interference exception, but she failed to *prove* timeliness under the active interference exception by a preponderance of the evidence at the evidentiary hearing on her motion.

2. Allegations contained in a post-conviction relief motion are not self-proving and failure to present evidence at a hearing in support of factual claims in a post-conviction relief motion constitutes abandonment of that claim. By failing to present any evidence in support of her claim of timeliness under the active interference exception, Fields abandoned her claim of active interference.

3. Even if Fields's motion met the basic requirements to be deemed a "verified pleading"—which it does not—absent a stipulation between the parties, an affidavit is not to be treated as evidence. Here, there was no stipulation between the parties. Consequently, the contention that the motion itself constituted evidence is unsupported by the record or by any controlling precedent.

Opinion by: Mark D. Pfeiffer, Presiding Judge May 25, 2021

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