IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

PAUL JOSEPH MOTTET,

Respondent,

v.

DIRECTOR OF REVENUE, STATE OF MISSOURI,

Appellant.

DOCKET NUMBER WD84301

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: October 12, 2021

APPEAL FROM

The Circuit Court of Putnam County, Missouri
The Honorable Samuel D. Frank, Judge

JUDGES

Special Division: Fischer, Sp. J., Presiding, and Pfeiffer and Witt, JJ. CONCURRING.

ATTORNEYS

Benjamin J. Gray, Kirksville, MO, Attorney for Respondent.

Eric S. Schmitt, Attorney General, Daniel N. McPherson, Assistant Attorney General, and Annabelle Attias, Special Assistant Attorney General, Missouri Department of Revenue, Jefferson City, MO, Attorneys for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

PAUL JOSEPH MOTTET, Respondent,
v.
DIRECTOR OF REVENUE, STATE OF MISSOURI, Appellant.

WD84301 **Putnam County**

Before Special Division Judges: Zel M. Fischer, Special Judge, Presiding, and Mark D. Pfeiffer and Gary D. Witt, Judges

The Director of Revenue of the State of Missouri ("Director") appeals from the judgment of the Circuit Court of Putnam County, Missouri ("trial court"), denying the Director's motion to set aside judgment under Rule 74.06 after the trial court entered judgment for Paul Mottet ("Mottet") and against the Director who, by and through its legal representative, the prosecuting attorney, failed to appear when the case was called for trial and failed to adduce any evidence.

In the Director's sole point on appeal, the Director contends that the trial court erred in denying his motion to set aside judgment because the trial court's judgment was void. The Director relies on section 56.060, RSMo ("[a] prosecuting attorney shall commence and prosecute all civil and criminal actions in the prosecuting attorney's county in which the county or state is concerned, [and] defend all suits against the state or county, . . ."); section 56.090, RSMo ("No judge shall allow the cases alluded to in sections 56.060 . . . to be tried before him, unless the prosecuting attorney or someone properly qualified to prosecute for him is present."); and section 56.120, RSMo ("If [the prosecuting attorney] be sick or absent, such court shall appoint some person to discharge the duties of the office until the proper officer resumes the discharge of his duties."). In so relying, the Director argues that the general provisions in chapter 56 of the Revised Statutes of Missouri regarding the duties of prosecuting attorneys apply to *any* case in which the prosecutor is required to represent a state entity, including the Director of the Department of Revenue.

AFFIRMED.

Special Division holds:

1. The general provisions of chapter 56 are not applicable to the current proceeding because the current proceeding is civil and not criminal, and is not a case against the state or county. Instead, this is a case against the Director of the Department of Revenue regarding the revocation of Mottet's driver's license.

2. Presuming that the legislature does not create superfluous language in its statutes, there would be no need for the "shall" directive in section 302.574.4, RSMo, if section 56.060 was the

applicable directive. Thus, Chapter 302, Missouri's Suspension and Revocation Administrative Procedure Act, is the applicable directive in cases such as this where the Director revokes a person's driver's license pursuant to section 302.574.3, RSMo.

3. The Director has the burden to establish grounds for the revocation by a preponderance of the evidence in a trial held pursuant to section 302.574.4. If the Director fails to make the requisite proof, by failing to appear for trial and adduce evidence, the driver's license revocation may not stand and the trial court may properly enter judgment for the driver. There is nothing in chapter 302 prohibiting a judgment against the Director when, duly notified of a trial setting, the Director fails to appear at the trial and fails to adduce evidence.

4. As the Director failed to appear for trial and adduce evidence, the trial court's judgment denying the Director's motion to set aside judgment under Rule 74.06 is affirmed.

Opinion by: Mark D. Pfeiffer, Judge October 12, 2021

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