

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

COMPLETE TITLE OF CASE

PAUL D. MATTHES,

Appellant-Respondent,

v.

DAVID D. WYNKOOP and WALKER-WALKER FAMILY LIMITED PARTNERSHIP,

Respondents-Appellants.

DOCKET NUMBER WD76668

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 30, 2014

APPEAL FROM

The Circuit Court of Henry County, Missouri
The Honorable Robert M. Liston, Judge

JUDGES

Division One: Ellis, P.J., and Mitchell and Gabbert, JJ.

CONCURRING.

ATTORNEYS

Jeffery T. Adams
Clinton, MO

Attorney for Appellant-Respondent,

Joseph R. Swift and Teresa M. Young
St. Louis, MO

Attorneys for Respondents-Appellants.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

PAUL D. MATTHES,)	
)	
Appellant-Respondent,)	
v.)	
)	OPINION FILED:
DAVID D. WYNKOOP and WALKER-)	June 30, 2014
WALKER FAMILY LIMITED)	
PARTNERSHIP,)	
)	
Respondents-Appellants.)	

WD76668

Henry County

Before Division One Judges: Joseph M. Ellis, Presiding Judge, and Karen King Mitchell and Anthony Rex Gabbert, Judges

Paul D. Matthes appeals the trial court's judgment granting David D. Wynkoop and Walker-Walker Family Limited Partnership's motion to dismiss Matthes's personal injury suit and motion to enforce settlement. Matthes raises two points on appeal. Matthes claims the trial court erred in granting both the motion to dismiss and the motion to enforce settlement because Defendants failed to show by clear and convincing evidence that a settlement agreement was reached during oral negotiations between Matthes and Defendants in that testimony from Matthes's former counsel indicating that Defendants' insurer offered to settle Matthes's claims for \$17,000 was 1) confidential information admitted in violation of section 491.060 RSMo, and 2) erroneously admitted hearsay evidence. Matthes contends that, without this testimony, there was insufficient evidence that Defendants offered to settle Matthes's claims for \$17,000. Next Matthes contends that the trial court erred in granting both the motion to dismiss and the motion to enforce settlement because if Defendants did not offer to settle Matthes's claims for \$17,000, then his communication of willingness to settle for \$17,000 constituted an offer (rather than acceptance of a previous offer), and no settlement agreement was reached in that Defendants' response contained new terms, and therefore was not an acceptance, but a counteroffer.

Defendants cross-appeal, contending that the trial court erred in assessing costs against them because Matthes was not the "prevailing party" in the litigation.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Division One holds:

There was sufficient admissible evidence to support the trial court's finding Defendants offered to settle Matthes's claims for \$17,000, and that a settlement agreement was reached during oral negotiations between Matthes and Defendants. Matthes's Point II is denied.

Because Matthes's Point I is predicated on the assumption that the trial court erred in finding that Defendants' insurer offered to settle Matthes's claims for \$17,000, and thus Matthes's expression of his willingness to settle for \$17,000 was itself an offer, rather than the acceptance of an offer, our denial of Point II also disposes of Point I.

The trial court erred in assessing costs against Defendants because Matthes was not the "prevailing party" in the litigation in that Matthes received none of the relief he sought, his cause was dismissed with prejudice, and he did not obtain a favorable decision on a single issue of significance to the underlying case, i.e., his petition for damages.

Opinion by: Karen King Mitchell, Judge

June 30, 2014

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