

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DIANA KRITZER, APPELLANT,**

**v.**

**THE CURATORS OF THE UNIVERSITY OF MISSOURI, RESPONDENT.**

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DOCKET NUMBER WD69457

DATE: May 12, 2009

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Appeal From:  
BOONE COUNTY CIRCUIT COURT  
THE HONORABLE KEVIN MICAJAH JOSEPH CRANE, JUDGE

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Appellate Judges:  
Division Two: Joseph P. Dandurand, P.J., Harold L. Lowenstein and James M. Smart,  
Jr., JJ.

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Attorneys:  
David J. Moen, Jefferson City, MO, **for appellant.**

Paul R. MaGuffee, Columbia, MO, **for respondent.**

# MISSOURI APPELLATE COURT OPINION SUMMARY

## MISSOURI COURT OF APPEALS, WESTERN DISTRICT

**DIANA KRITZER, APPELLANT**

v.

**THE CURATORS OF THE UNIVERSITY OF MISSOURI, RESPONDENT**

WD69457

BOONE COUNTY CIRCUIT COURT

Before Division Two Judges: Joseph P. Dandurand, P.J., Harold L. Lowenstein and James M. Smart, Jr., JJ.

After the University of Missouri terminated Diana Kritzer's employment as a nurse, she appealed her termination pursuant to the policies set forth in the University's human resources policy manual. Kritzer was unsuccessful in the first three steps of the grievance procedure. She appealed her termination to a hearing before the grievance committee, the fourth step, and was successful. The University appealed the grievance committee's decision to the Board of Curators, which is the fifth and final step of the grievance procedure. The Curators rejected the recommendation of the grievance committee and upheld Kritzer's termination.

Kritzer brought two actions at law with respect to the University's grievance procedure. She filed a petition to confirm the grievance committee decision, contending that it was an enforceable and final arbitration award, not subject to plenary review by the Curators. She subsequently sought review of her case under chapter 536 for judicial review of an agency proceeding. The cases were consolidated.

The court conducted a trial of the issues as to whether the parties entered into an agreement for a binding arbitration. It ruled that they had not done so, finding therefore that the grievance "award" remained subject to the determination of the Curators. The court denied confirmation of the purported award. As for the petition for review under chapter 536, the trial court granted summary judgment in favor of University on the ground that Kritzer was not entitled to judicial review under chapter 536.

Kritzer appeals.

**AFFIRMED.**

**Division Two holds:**

1. The test of whether a proceeding was an arbitration is whether the parties agreed to submit the disagreement to a forum for a final resolution. The trial court found that the parties did not have such an agreement. This finding is supported by substantial evidence, and the trial court did not misapply the law.
2. As an at-will employee, Kritzer was not entitled to review under chapter 536. Summary judgment in the University's favor was not against the weight of evidence and did not misapply the law.
3. Kritzer cannot complain that the docket fails to reflect that the trial court received her suggestions in opposition to the University's motion for summary judgment because the transcript shows that the trial court did timely receive and comment on the suggestions. We assume the trial court read and considered any briefing materials he possessed unless the record indicates otherwise. There is no indication here that the court did not read the suggestions.

**Opinion by James M. Smart, Jr., Judge**

May 12, 2009

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