

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ARCH INSURANCE COMPANY,**

**Appellant,**

**v.**

**PROGRESSIVE CASUALTY INSURANCE COMPANY,**

**Respondent.**

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DOCKET NUMBER WD69805

**Date: September 22, 2009**

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Appeal from:  
Jackson County Circuit Court  
The Honorable Richard E. Standridge, Judge

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Appellate Judges:  
Division One: Alok Ahuja, Presiding Judge, Harold L. Lowenstein, Senior Judge, and Thomas H. Newton, Chief Judge

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Attorneys:  
James C. Wirken, Esq., Kansas City, MO, for appellant.  
Daniel N. Allmayer, Esq., Kansas City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

**ARCH INSURANCE COMPANY**

**Appellant,**

**v.**

**PROGRESSIVE CASUALTY INSURANCE COMPANY,**

**Respondent.**

WD69805

JACKSON COUNTY

Before Division One Judges: Alok Ahuja, Presiding Judge, Harold L. Lowenstein, Senior Judge, and Thomas H. Newton, Chief Judge

Centrix Financial financed Jermaine Taylor's purchase of an automobile and held a lien on Taylor's car. Taylor's car was damaged in 2003. Prior to the accident, Taylor had been insured by Respondent Progressive Casualty Insurance Company. Progressive's policy also covered Centrix as a loss payee. Prior to the accident, Taylor had failed to make the required premium payments. Progressive contended that, as required by the terms of the policy, it provided timely notice to both Taylor and Centrix that it intended to cancel Taylor's policy, and that the policy had been cancelled before the 2003 damage. Progressive accordingly refused to pay Centrix for any loss it had suffered. Centrix instead received indemnity for the loss from its own insurer, Appellant Arch Insurance Company. Arch sued Progressive, asserting (as Centrix's subrogee) that Progressive had failed to notify Centrix of the upcoming cancellation of Taylor's policy, and that the policy accordingly remained in force at the time Taylor's car was damaged, making Progressive liable for the loss.

The trial court granted Progressive summary judgment, and Arch appeals.

**DISMISSED.**

**Division One holds:**

Arch's opening Brief on appeal fails to adequately present any argument that could justify reversal, and its appeal is accordingly dismissed. The Points Relied On do not challenge the basis on which the trial court ruled; instead, the first Point vaguely argues that "the Trial Court refused to consider all known facts and evidence in ruling," while the second Point merely asserts Progressive's "clear duty to notify the insured as well as the co-insureds, or loss payee, of any cancellation or termination of the insured's policy," a duty which is not even controverted.

Arch's Argument is also deficient. It argues – repeatedly – that Progressive failed to present any evidence to support the mailing of notice to Centrix, which is simply inaccurate. Because Arch does not even acknowledge Progressive's summary judgment proof, it does not argue that a genuine issue of material fact existed despite that proof, because (for example) Progressive's evidence was somehow defective or insufficient, or because Arch presented contrary facts that created an issue for trial. Because Arch fails to even acknowledge – much less challenge – the basis on which the trial court's ruling depends, it has not demonstrated a basis for appellate relief.

We also note that the issues Arch apparently intended to raise – deficiencies in Progressive's summary judgment evidence, and a contention that Centrix's claimed non-receipt of the cancellation notice counters Progressive's proof that the notice was mailed – are not free from doubt. This provides an additional basis for our refusal to consider them, given the defects in Arch's briefing on appeal.

**Opinion by: Alok Ahuja, Judge**

September 22, 2009

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

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

**ARCH INSURANCE COMPANY**

**Appellant,**

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**PROGRESSIVE CASUALTY INSURANCE COMPANY,**

**Respondent.**

WD69805

JACKSON COUNTY

This suit for breach of contract deals with the grant of a summary judgment in favor of defendant, Progressive.

Dissent Holds:

This court reviews the grant of summary judgment *de novo*. In dismissing this appeal, the majority ignores this standard in favor of technical compliance to Rule 84.04. The grant of summary judgment was improper as Progressive failed to demonstrate that no genuine issue of fact existed. Arch raised the grant of summary judgment as error in its points relied on. A genuine issue of material fact still exists because Arch contends that no notice was received and Progressive contends that the evidence was sufficient to establish notice. A material fact is in dispute. This suit should be remanded for a trial on the merits.

Before: Division One: Alok Ahuja, Presiding Judge, Harold L. Lowenstein, Senior Judge, and Thomas H. Newton, Chief Judge

Opinion by: Harold L. Lowenstein, Senior Judge

**September 22, 2009**

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