

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, EX REL., JEREMIAH W. NIXON,
MISSOURI ATTORNEY GENERAL

Appellant

v.

VICTOR HUGHES

Respondent

DOCKET NUMBER **WD69891**

DATE: April 7, 2009

Appeal From:

Circuit Court of Cole County, MO
The Honorable Jon Edward Beetem, Judge

Appellate Judges:

Division One

Alok Ahuja, P.J., Harold L. Lowenstein, J., and Thomas H. Newton, C.J.

Attorneys:

Robert D. Noland, Kansas City, MO

Counsel for Appellant

Victor Hughes, New Madrid, MO

Respondent Acting Pro Se

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

STATE OF MISSOURI, EX REL., JEREMIAH W. NIXON,
MISSOURI ATTORNEY GENERAL, Appellant, v.
VICTOR HUGHES, Respondent

WD69891

Cole County

Before Division One Judges: Ahuja, P.J., Lowenstein, J., and Newton, C.J.

The State appeals the circuit court's judgment granting Victor Hughes's motion for summary judgment on its petition, filed pursuant to §§ 217.825-.841, RSMo 2000, seeking reimbursement for the cost of his incarceration in the Missouri Department of Corrections. On appeal, the State raises two points.

In its first point on appeal, the State claims that the circuit court erred in granting summary judgment for Hughes on the basis that the Attorney General lacked good cause to believe that he had sufficient assets to reimburse the State for his incarceration because Hughes's motion for summary judgment violated Rule 74.04(c)¹ and was void. In its second point, the State claims that the circuit court erred in granting summary judgment to Hughes on the basis that Attorney General lacked good cause because Hughes (1) failed to plead the correct facts in his motion and, even assuming that he did, (2) the State sufficiently carried its burden to place those facts in genuine dispute.

REVERSED AND REMANDED.

Division One Holds:

The circuit court erred in entering summary judgment for Hughes.

The State is correct that Hughes's summary judgment motion violated Rule 74.04. Even a cursory glance at Hughes's motion establishes that, in violation of Rule 74.04(c), Hughes's motion fails to include a statement of uncontroverted materials facts that establish he is entitled to judgment as a matter of law. Furthermore, while Hughes does allege that the assets in his account were gifts, he fails to include specific references to the pleadings, discovery, exhibits, or affidavits to support this assertion. Thus, because Hughes's motion was legally defective, it could not serve as the basis for the circuit court's grant of summary judgment. The circuit court, therefore, erred in entering summary judgment for Hughes.

Even assuming, however, that this was not a sufficient reason to reverse the circuit court's judgment, we would also reverse based on the State's second point. In his motion, Hughes claims that he is entitled to summary judgment because the only funds, besides his prison wages, that were deposited in his account were gifts. A mere allegation that his funds were gifts, however, is not sufficient to establish that the Attorney General lacked good cause to believe that he had sufficient assets.

¹ All rule references are to Missouri Rules of Civil Procedure, 2008, unless otherwise indicated.

Rather, to establish his right to summary judgment, Hughes would have to allege uncontroverted facts establishing that the Attorney General knew, or should have known, that the prior deposits to Hughes's inmate account were gifts and, thus, the Attorney General could not have had a good faith and reasonable belief that Hughes had sufficient assets to reimburse the State for his incarceration. He does not allege any facts from which the court can infer that the Attorney General should have known that the prior deposits in his account were gifts.

Furthermore, even assuming that Hughes's motion can be construed as alleging that the Attorney General should have known that these assets were gifts, he was not entitled to summary judgment because the record establishes that the State carried its burden to place the facts into a genuine dispute. Thus, the circuit court erred in entering summary judgment for Hughes.

Opinion by Newton, C. J.

Date: April 7, 2009

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