

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STEVEN GOFF**

**APPELLANT,**

**v.  
ETHA FOWLER**

**RESPONDENT.**

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DOCKET NUMBER WD71825  
DATE: September 14, 2010

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Appeal From:

Jackson County Circuit Court  
The Honorable Marco A. Roldan, Judge

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Appellate Judges:

Division One: Thomas H. Newton, Presiding Judge, Mark Pfeiffer and Cynthia L. Martin,  
Judges

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Attorneys:

F. Russell Peterson and Aaron N. Woods, Overland Park, KS, for appellant.

James L. Sanders and Allison G. Ross, Kansas City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STEVEN GOFF,**

**APPELLANT,**

**v.**

**ETHA FOWLER,**

**RESPONDENT.**

No. WD71825

Jackson County

Before Division One Judges: Thomas H. Newton, Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

Steven Goff appeals from the trial court's grant of summary judgment in favor of Etha Fowler due to the bar of the statute of limitations. Goff contends that the trial court erred in granting summary judgment because: (1) Fowler failed to establish the bar of the statute of limitations; (2) the judgment was improperly based on an unsigned, unauthenticated letter; and (3) Fowler failed to establish when the last settlement payment was made to Goff.

**REVERSED AND REMANDED.**

**Division One holds:**

(1) All three of Goff's points on appeal erroneously presume that Fowler, not Goff, bore the burden to address the application of K.S.A. 40-275.

(2) Goff presented information to the trial court in the form required by Rule 74.04(c)(2) sufficient to create a material issue of fact in dispute with respect to the specific application of K.S.A. 40-275 to his case. Goff clearly could have done more to insure that he established an issue of fact in dispute as to a matter on which he bore the burden. However, we are nonetheless required to conclude that his affidavit stating, albeit summarily, that he did not receive payment for a portion of his damages from Fowler within ten days of the accident giving rise to his claim suffices to cross the bare minimum threshold necessary to prevent the entry of summary judgment.

**Opinion by Cynthia L. Martin, Judge**

September 14, 2010

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