

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

J.H.

APPELLANT,

**v.
EMIL BROWN**

RESPONDENT.

DOCKET NUMBER WD72335

DATE: February 8, 2011

Appeal From:

Jackson County Circuit Court
The Honorable Peggy Stevens McGraw, Judge

Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer,
Special Judge

Attorneys:

Scott A. McCreight, Michael S. Ketchmark, and Brett A. Davis, Kansas City, MO, for appellant.

Gregory A. Leyh, Gladstone, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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J.H.,

APPELLANT,

v.

EMIL BROWN,

RESPONDENT.

No. WD72335

Jackson County

Before Division Three Judges: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

This appeal arises out of a breach of contract action filed by J.H. to enforce a settlement agreement between J.H. and Emil Brown. J.H. made an offer to settle which included six material terms, one being a penalty provision and one being a confidentiality provision. Brown rejected the penalty provision and advised that agreement on the precise language of the confidentiality agreement was required as a condition of settlement. J.H. treated Brown's response as an acceptance of her settlement offer. Brown denied that a settlement contract had been formed. J.H. filed suit to enforce the settlement contract.

Following a bench trial, the circuit court entered a judgment in favor of Brown, finding that an enforceable settlement agreement had not been reached because the parties had not agreed on all material terms. On appeal, J.H. contends that the trial court erred because she established by clear and convincing evidence that the parties had agreed to all of the material terms of the settlement.

AFFIRMED.

Division Three holds:

(1) Settlement agreements are governed by the law of contracts. It was J.H.'s burden to prove by clear and convincing evidence that a settlement agreement had been reached.

(2) In order to form a contract there must be an offer and mirror-image acceptance as to all material terms.

(3) The specific language of a confidentiality provision can be a material term of a settlement contract. Here, Brown made it clear that the precise language of the confidentiality provision was material to his willingness to enter into a settlement.

(4) J.H. and Brown never agreed to the specific language of the confidentiality provision. An enforceable settlement contract was not reached.

Opinion by: Cynthia L. Martin, Judge

February 8, 2011

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