

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI ex rel. CITY OF BLUE SPRINGS, MISSOURI,

Relator,

v.

THE HONORABLE ROBERT M. SCHIEBER, Circuit Court Judge,

Respondent.

DOCKET NUMBER WD73774

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 21, 2011

ORIGINAL PROCEEDING FOR REMEDIAL WRIT OF MANDAMUS

JUDGES

Writ Division: Mitchell, P.J., and Newton and Pfeiffer, JJ.

CONCURRING.

ATTORNEYS

Brandon D. Mizner, Kansas City, MO

Attorney for Relator and Defendant in the
Underlying Action, City of Blue Springs, Missouri,

Margaret D. Lineberry, Kansas City, MO

Attorney for Plaintiffs in the Underlying Action,
Shawn Stevens and Jennifer Stevens,

David R. Buchanan, Kansas City, MO

Attorney for Defendants in the Underlying Action,
MarKirk Construction, Inc., and Kirk Jones,

Joseph S. Gall, Independence, MO,

Attorney for Defendant in the Underlying Action,
Damar Development, Inc.



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

STATE OF MISSOURI ex rel. CITY OF)
BLUE SPRINGS, MISSOURI,)

Relator,)

v.)

THE HONORABLE ROBERT M.)
SCHIEBER, Circuit Court Judge,)

Respondent.)

OPINION FILED:
June 21, 2011

WD73774

Before Writ Division Judges: Karen King Mitchell, Presiding Judge, and
Thomas H. Newton and Mark D. Pfeiffer, Judges

This is a *res judicata* case. The plaintiffs had previously sued the defendant and other co-defendants. The circuit court granted summary judgment in favor of the defendant, but the plaintiffs' claims against the co-defendants remained. The plaintiffs then dismissed their claims against the remaining co-defendants without prejudice and refiled the same claims against most of the defendants, including the defendant in whose favor summary judgment had been granted. The primary issue is whether there was a final judgment on the merits with respect to the defendant for whom summary judgment had been granted. We hold that there was. Accordingly, we issue and make absolute the writ of mandamus, mandating that the Respondent grant the Relator's motion for judgment on the pleadings.

WRIT OF MANDAMUS MADE ABSOLUTE.

WRIT DIVISION HOLDS:

Summary judgment is *always* a judgment on the merits. Therefore, there is simply no such thing as a "summary judgment of dismissal without prejudice."

When the circuit court grants one defendant summary judgment, and the plaintiff thereafter dismisses the other parties without prejudice, the judgment becomes final as to the first

defendant once the others have been dismissed. That is what happened here: the defendant was granted summary judgment, and then the plaintiffs dismissed the remaining co-defendants without prejudice.

Thus, the summary judgment was a final judgment on the merits. All of the other elements of *res judicata* apply to this case. Accordingly, we issue the writ of mandamus, make it absolute, and direct the Respondent to grant the motion for judgment on the pleadings.

OPINION BY: Karen King Mitchell, Presiding Judge

June 21, 2011

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