

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**VONDA GOINES,  
APPELLANT  
vs.**

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, FAMILY SUPPORT AND  
CHILDREN'S DIVISION,  
RESPONDENT**

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DOCKET NUMBER WD73822

DATE: February 28, 2012

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Appeal from:

The Circuit Court of Cole County, Missouri  
The Honorable Jon E. Beetem, Judge

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Appellate Judges:

Division Two: Gary D. Witt, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

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Attorneys:

Christopher R. Mirakian, for Appellant

Doug Leyshock, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**VONDA GOINES, APPELLANT**

**v.**

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, FAMILY SUPPORT AND  
CHILDREN'S DIVISION, RESPONDENT**

WD73822 (Consolidated with WD73876)

Cole County, Missouri

Before Division Two Judges: Gary D. Witt, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Vonda Goines appeals from the denial of her request for an award of attorney's fees after the Circuit Court of Cole County found in her favor in a declaratory judgment action filed against the Department of Social Services, Family Support and Children's Division.

**AFFIRMED.**

**Division Two holds:**

- (1) In any case involving non-tort claims, an enabling statute's provision the agency can sue or be sued is sufficient to constitute consent to suit. Because § 207.020 grants the Family Support and Children's Division the power to sue and be sued, with regard to Appellant's non-tort claims for declaratory judgment and injunctive relief, sovereign immunity has been waived. The trial court erred in concluding otherwise.
- (2) No exception to the American Rule applies so as to warrant an award of attorney's fees to Appellant. Section 536.087.1 was not applicable because the finding of probable cause by DSS was not the result of "an adversary proceeding in a contested case." Likewise, the hearing Appellant could have requested to review the probable cause hearing would not have been a contested case.
- (3) Appellant failed to make a claim to the trial court that attorney's fees should be awarded under § 105.711 and, therefore, failed to preserve any such claim for appeal.
- (4) This case clearly does not involve the type of "unusual circumstances" where "equity demands a balance of the benefits" as established under that case law exception to the American Rule.

(5) The record did not establish that DSS's actions in allowing this case to proceed to trial were frivolous, without substantial legal grounds, reckless, or punitive. Accordingly, the trial court could not have properly found that attorney's fees were warranted under the special circumstances exception to the American Rule.

Opinion by Joseph M. Ellis, Judge

Date:

February 28, 2012

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