

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**IN THE ESTATE OF KATHERINE L. NELSON; KAREN LYNN QUISENBERRY,**  
**Respondents,**

**v.**

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, MO HEALTHNET DIVISION,**  
**Appellant.**

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DOCKET NUMBER WD73957

**Date: March 20, 2012**

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Appeal from:  
Boone County Circuit Court  
The Honorable Deborah Daniels, Judge

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Appellate Judges:  
Division Four: Lisa White Hardwick, C.J., Alok Ahuja, J. and Jon E. Beetem, Sp. J.

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Attorneys:  
Jeff Klusmeier, Jefferson City, MO, for appellant.  
Cynthia A. Barchet, Columbia, MO, for respondent.

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

**IN THE ESTATE OF KATHERINE L. NELSON; KAREN LYNN QUISENBERRY**

**Respondents,**

**v.**

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, MO HEALTHNET  
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**Appellant.**

WD73957

Boone County

Katherine Nelson died on January 16, 2010. From 2002 until the time of her death, the State claims to have expended money for her medical care under the Medicaid program. On November 23, 2010, the State filed a claim against Nelson's estate for \$18,132.87.

Following an evidentiary hearing, the circuit court denied the State's Medicaid reimbursement claim. The circuit court concluded that, to establish an allowable claim, the State was required to prove that any checks it had issued to health-care providers for Nelson's medical care had in fact been presented and paid. Because no such evidence was presented here, the court held that the State's claim failed. The State appeals.

**AFFIRMED.**

Division Four holds:

In *Wright v. State*, 344 S.W.3d 743, 748 (Mo. App. W.D. 2011), we held that the plain meaning of § 473.398.4, RSMo requires the State to prove two essential elements to establish an allowable reimbursement claim: "[1] proof of what providers billed and [2] proof that payment was made." Although the State suggests that this holding was erroneous, was dictum, or is otherwise inapplicable, we consider ourselves to be bound by this recent statement of the elements the State must prove in this context.

The trial court found that the State had failed to present evidence satisfying the second element – that "the payment was made," § 473.398.4(2) – because it presented no evidence that any check that it issued to a health care provider was "cashed and cleared the bank." The State does not directly challenge this conclusion, and the ruling is accordingly affirmed. We gratuitously observe that the trial court's construction of the term "payment" appears to be consistent with the general common-law rule that, "[i]n the absence of agreement to the contrary, delivery of a check to a creditor and his acceptance of it is not payment of the debt or obligation

until the check has itself been paid, and when the check is not paid, it may not be said to have constituted payment of the debt or obligation for which given.” *Bartleman v. Humphrey*, 441 S.W.2d 335, 343 (Mo. 1969).

Here, the State’s evidence established only that checks were issued to pay health-care providers for services provided to Nelson. No evidence was presented that those checks were in fact presented for payment, or honored. This evidence was insufficient to establish that “the payment was made” under the trial court’s test.

Before: Division Four: Lisa White Hardwick, C.J., Alok Ahuja, J. and Jon E. Beetem, Sp. J.

Opinion by: Alok Ahuja, Judge

**March 20, 2012**

**THIS SUMMARY IS UNOFFICIAL AND  
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