

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

---

**COMPLETE TITLE OF CASE**

TERRY CLARK,

Appellant,

v.

DAVID FRANCIS,

Respondent.

---

**DOCKET NUMBER WD75829**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** October 29, 2013

---

**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Sandra C. Midkiff, Judge

---

**APPELLATE JUDGES**

Division Three: Karen King Mitchell, Presiding Judge, and Lisa White  
Hardwick and Gary D. Witt, Judges

---

**ATTORNEYS**

Terry J. Clark  
Olathe, KS

Appellant, *pro se*,

David F. Oliver and Timothy R. West  
Kansas City, MO

Attorneys for Respondent.

---



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

TERRY CLARK,

)  
)  
)  
**Appellant,** )

v. )

DAVID FRANCIS,

)  
)  
)  
**Respondent.** )

) **OPINION FILED:**  
) **October 29, 2013**  
)

WD75829

Jackson County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Gary D. Witt, Judges

Terry Clark appeals the denial of his declaratory judgment action against David Francis, in which Clark sought a declaration that he and Francis had a partnership agreement as to ownership of certain business entities. Clark argues that the trial court lacked subject matter jurisdiction over the claim because some of the property owned by the entities was located in Kansas. Clark further argues that the court's judgment was not supported by substantial evidence, was against the weight of the evidence, involved a misapplication of the law, and constituted an abuse of discretion.

**AFFIRMED.**

### **Division Three holds:**

1. The Court of Appeals cannot consider the merits of an appeal where the trial court lacked subject matter jurisdiction.
2. Personal jurisdiction and subject matter jurisdiction are two separate issues; personal jurisdiction is subject to waiver, but subject matter jurisdiction is not.
3. Section 508.030 is a venue statute that does not affect a trial court's subject matter jurisdiction.

4. Here, the trial court had both personal and subject matter jurisdiction.
5. Before a partnership can be legally recognized, there must be an agreement between the parties to share both profits and losses. An agreement to share profits only does not create a partnership.
6. An agreement to create a partnership upon the occurrence of a future event does not create a partnership until the future event occurs.
7. Here, the agreement entered into provided that Clark and Francis would become partners once the business became profitable and Francis and his family members were repaid their contributions. Neither of those contingencies came to fruition; thus, there was no partnership. Even if the contingencies had occurred, the agreement provided for profit-sharing only, and Clark was never to share in the losses. Thus, the agreement was not a partnership agreement.

**Opinion by: Karen King Mitchell, Judge**

October 29, 2013

\* \* \* \* \*

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