

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT DENNIS ZINKE

APPELLANT,

**v.
MICHAEL T. ORSKOG, D.C.**

RESPONDENT.

DOCKET NUMBER WD76263

DATE: December 10, 2013

Appeal From:

Adair County Circuit Court
The Honorable Russell E. Steele, Judge

Appellate Judges:

Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and James C. Thompson, Special Judge

Attorneys:

John S. Wallach, Clayton, MO, for appellant.

Terri Z. Austenfeld, Overland Park, KS, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

MICHAEL T. ORSKOG, D.C.,

RESPONDENT.

No. WD76263

Adair County

Before Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and James C. Thompson, Special Judge

Robert Zinke appeals from the trial court's judgment dismissing his refiled medical malpractice lawsuit against Michael Orskog. At issue is whether Zinke refiled the lawsuit before the expiration of the one-year savings statute described in section 516.230. Zinke claims that the trial court erred in calculating the one-year time period from the date Zinke filed a motion to dismiss the initial lawsuit, rather than from the date the trial court entered an order granting the motion to dismiss.

Affirmed.

Division Four holds:

The calculation of the one-year time period under the savings statute commences when a voluntary dismissal is filed. The effective date of a voluntary dismissal is not dependent upon the form or language of the pleading filed to secure the dismissal. A motion requesting the entry of an order of dismissal is thus not distinguishable from a unilateral statement of dismissal. Both have legal effect on the day of their filing that cannot be altered by subsequent court order. Once filed, there is nothing pending before the trial court on which it is permitted to act, though the court may enter administrative orders such as those with regard to the assessment of costs.

Opinion by Cynthia L. Martin, Judge

December 10, 2013

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