

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL.  
JERRY SCHERSCHEL**

**RESPONDENT,**

**v.  
CITY OF KANSAS CITY, MISSOURI,  
ET AL.**

**APPELLANT.**

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DOCKET NUMBER WD77951

DATE: September 8, 2015

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Appeal From:

Jackson County Circuit Court  
The Honorable Justine E. Del Muro, Judge

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Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and James E. Welsh,  
Judge

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Attorneys:

Bruce C. Jackson, Jr., Kansas City, MO, for respondent.

Douglas McMillan, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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JERRY SCHERSCHEL,**

**RESPONDENT,**

**v.  
CITY OF KANSAS CITY, MISSOURI,  
ET AL.,**

**APPELLANT.**

No. WD77951

Jackson County

Before Division One: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and James E. Welsh, Judge

The City of Kansas City, Missouri, appeals a mandamus judgment directing it to comply with the Administrative Code of Kansas City by adjusting employee Jerry Scherschel's pay classification and pay rate. The City argues that the trial court erred because (1) Scherschel failed to show by clear and convincing evidence that he was entitled to a mandamus judgment; (2) the judgment relied on hearsay testimony; and (3) the judgment improperly awarded money damages.

**Affirmed.**

**Division One holds:**

The trial court did not err in granting a mandamus judgment in favor of Scherschel because the Administrative Code unequivocally required the City to classify Scherschel's move from one city position to another a promotion and to adjust his pay rate accordingly. The City's clear duty to properly classify and compensate Scherschel under the unequivocal provisions of the Administrative Code did not disappear simply because Scherschel was persuaded by misinformation to sign a voluntary demotion letter.

The trial court did not abuse its discretion when it allowed Scherschel to testify about a conversation he had with a city supervisor prior to moving from one city position to another. The conversation Scherschel testified about was already submitted to the trial court by the parties prior to trial in their joint stipulation of facts. The conversation also was not hearsay because it was admitted as an explanation of conduct rather than as proof of facts.

The mandamus judgment did not award Scherschel money damages, and, thus, the trial court committed no error. While the mandamus judgment could subject the City to a future suit for money damages, that potential effect does not render the mandamus judgment a money judgment.

Opinion by Cynthia L. Martin, Judge

September 8, 2015

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