

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

JAMES PITTMAN,

Appellant

v.

COOK PAPER RECYCLING CORPORATION.

Respondent

DOCKET NUMBER WD77973

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 27, 2015

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Joel P. Fahnestock, Judge

Appellate Judges:

Special Division
James Edward Welsh, P.J., Anthony Rex Gabbert, J., and Robert M. Clayton, III, Sp. J.

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

**JAMES PITTMAN, Appellant, v.
COOK PAPER RECYCLING CORPORATION, Respondent**

WD77973

Jackson County

Before Special Division Judges: Welsh, P.J., Gabbert, J., and Clayton, Sp. J.

James Pittman appeals from the circuit court's judgment dismissing his petition for damages alleging that his employer, Cook Paper Recycling Corporation, "caused the workplace to be an objectively hostile and abusive environment based on sexual preference." The circuit court dismissed Pittman's petition for failure to state a claim. Pittman contends that the circuit court erred in dismissing his claim because his petition adequately stated a claim for sex discrimination. In particular, Pittman contends that his allegation that he was harassed and terminated from his employment because of his sexual orientation was sufficient to state a claim for discrimination under the Missouri Human Rights Act.

Affirmed

Special Division holds:

Opinion by Presiding Judge Welsh:

The plain language of the Missouri Human Rights Act is clear and unambiguous. Employers cannot discriminate against employees on the basis of their "sex." The clear meaning prohibiting discrimination based upon "sex" under the Missouri Human Rights Act intended by the Missouri legislature concerns discrimination based upon a person's gender and has nothing to do with sexual orientation. Once legislative intent has been determined and becomes the pole star of statutory construction, there can be no unintended consequences of legislation by judicial interpretation. No matter how compelling Pittman's argument may be and no matter how sympathetic this court may be to Pittman's situation, we are bound by the state of the law as it currently exists. Without the legislative addition of "sexual orientation" to the statutory list of protected statuses, the Missouri Human Rights Act does not prohibit discrimination based upon a person's sexual orientation.

Separate concurring opinion by Special Judge Robert M. Clayton, III:

The author writes separately to state he reluctantly concurs in the opinion of Judge Welsh with respect to the result only.

Dissenting opinion by Judge Gabbert:

The dissent would find that the circuit court erred in dismissing Pittman’s petition for failure to state a claim. The Missouri Human Rights Act is a remedial statute which is to be construed liberally and such a construction allows for the meaning of “sex” within the Missouri Human Rights Act to include sexual orientation and preference. Thus, Pittman stated a claim under the Missouri Human Rights Act when he alleged that he was discriminated against on the basis of his sexual preference. Further, Pittman stated a claim for workplace sexual harassment under the Missouri Human Rights Act when he articulated that gender bias was associated with his claims.

For the foregoing reasons, the dissent would reverse the circuit court’s judgment.

James E. Welsh, P.J., writes for the majority	October 27, 2015
Robert M. Clayton, III, Sp. J., writes in a separate concurring opinion.	October 27, 2015
Anthony R. Gabbert, J. writes for the dissent.	October 27, 2015

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