

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

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**COMPLETE TITLE OF CASE**

JON RISCHER, GREG RISCHER, and BRAD RISCHER,

Respondents,

v.

PATRICIA SUE HELZER,

Appellant.

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**DOCKET NUMBER WD78149**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** September 1, 2015

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**APPEAL FROM**

The Circuit Court of Nodaway County, Missouri  
The Honorable Roger M. Prokes, Judge

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**JUDGES**

Division Three: Mitchell, P.J., and Hardwick and Gabbert, JJ.

CONCURRING.

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**ATTORNEYS**

Jeffrey O. Parshall and Ryan W. Redmon  
Columbia, MO

Attorneys for Respondents,

Michael L. Taylor and Jennifer C. Ray  
St. Joseph, MO

Attorneys for Appellant.

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

**JON RISCHER, GREG RISCHER, and** )  
**BRAD RISCHER,** )  
 )  
**Respondents,** )  
**v.** )  
 )  
**PATRICIA SUE HELZER,** )  
 )  
**Appellant.** )

**OPINION FILED:**  
**September 1, 2015**

**WD78149**

**Nodaway County**

**Before Division Three Judges:** Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Anthony Rex Gabbert, Judges

Patricia Helzer appeals the trial court's determination that her agreement to turn over her survivor interest in her former husband's ("Father") pension benefits to his sons from his first marriage was enforceable. As part of their dissolution settlement, Father and Helzer agreed that, should Father predecease Helzer, she would pay over any survivor benefits from Father's pension to Father's sons. The dissolution court approved the separation agreement and made it a part of the judgment dissolving the marriage. Upon Father's passing, the sons requested that Helzer turn over the benefits she was receiving. When she declined, the sons brought the instant action. Helzer argued that: (1) the separation agreement is invalid and unenforceable because Missouri statutes do not allow the transfer of pension survivor benefits and because the transfer of benefits is against public policy; and (2) the dissolution court lacked authority to enforce such an assignment. The trial court determined that the agreement was enforceable, and ordered Helzer to turn over any benefits she receives.

**AFFIRMED.**

**Division Three holds:**

1. When a dissolution court finds a separation agreement to be conscionable, the terms of the separation agreement are binding on the trial court. The court does not retain the

power to modify the terms of the separation agreement that is incorporated into a judgment and decree of dissolution.

2. Res judicata, or claim preclusion, precludes the parties or privities from later bringing claims arising from the same set of facts that could or should have been pursued in the prior action, and unequivocally applies to a defense that a defendant failed to raise in the prior action.
3. If Helzer believed that the agreement to pay over the survivor benefits to the sons was contrary to a statute that arguably bans such assignments, her remedy was to appeal the judgment, not challenge the judgment in a collateral proceeding, many years later.
4. Res judicata also applies to Helzer's claim that a subsequently enacted statute bars the assignment of the survivor benefits, because the law bars the retrospective application of statutes to cases that have achieved final resolution.
5. Subject matter jurisdiction is conveyed by the constitution, not statutes, and under the constitution, the dissolution court had jurisdiction over Helzer and Father's dissolution proceeding. Thus, even if the dissolution court did not have statutory authority to order Helzer to pay over the survivor benefits, it still had subject matter jurisdiction over the case. So long as the dissolution court had subject matter jurisdiction over the proceeding, its judgment is not subject to collateral attack from a party to the judgment.

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

September 1, 2015

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