

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KEVIN M. HIGGINS AND SUE E.
HIGGINS**

APPELLANTS,

**v.
ABIGAIL J. FERRARI AND EMMITT
F. SMITH**

RESPONDENTS.

DOCKET NUMBER WD78327

DATE: November 17, 2015

Appeal From:

Cass County Circuit Court
The Honorable R. Michael Wagner, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt,
Judge

Attorneys:

Evan A. Douthit and Jeffrey Dean Row, Leawood, KS, for appellants.

Gabriel A. Domjan, Lee's Summit, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KEVIN M. HIGGINS AND SUE E.
HIGGINS,**

APPELLANTS,

v.

**ABIGAIL J. FERRARI AND EMMITT
F. SMITH,**

RESPONDENTS.

No. WD78327

Cass County

Before Division Three: Joseph M. Ellis, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Appellants Kevin Higgins and Sue Higgins (collectively "the Higginses") appeal the trial court's entry of judgment on all counts in favor of Respondents Abigail Ferrari and Emmitt Smith (collectively the "Respondents"). The Higginses claim that the Respondents conspired with Tony Ferrari to fraudulently transfer money received from the Higginses to a bank account controlled by Respondents, thereby placing those assets out of the reach of the Higginses in their attempts to satisfy their claims against Tony. The Higginses raise three points on appeal. The Higginses argue that the trial court's judgment erroneously declared and applied the law and was against the weight of the evidence regarding their claims for fraudulent transfer and civil conspiracy to commit fraud.

WE AFFIRM

Division Three holds:

(1) The trial court did not err in entering judgment in favor of the Respondents on the Higginses' claim for fraudulent transfer, based on the theory of actual fraud, because there was sufficient evidence in the record to support the trial court's determination that the transfers at issue were made for a valid business purpose.

(2) The trial court did not err in entering judgment in favor of the Respondents on the Higginses' claim for fraudulent transfer, based on the theory of constructive fraud, because the trial court was correct in finding that Tony received "reasonably equivalent value" in exchange for the transfers at issue.

(3) The trial court did not err in entering judgment in favor of the Respondents on the Higginses' claim for civil conspiracy to commit fraud, based on their claims for fraudulent transfer, as there was no underlying wrongful act or tort on which to base the claim.

Opinion by Gary D. Witt, Judge

November 17, 2015

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