

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MERTENS CONSTRUCTION
COMPANY, INC.**

APPELLANT,

**v.
DIVISION OF EMPLOYMENT
SECURITY**

RESPONDENT.

DOCKET NUMBER WD78655

DATE: May 17, 2016

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Attorneys:

Thomas K. Riley and Jacquelyn Brazas, Fulton, Missouri, for appellant.

Sara H. Harrison and Mandolin Jackson, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MERTENS CONSTRUCTION COMPANY, INC.,

APPELLANT,

v.

DIVISION OF EMPLOYMENT SECURITY,

RESPONDENT.

No. WD78655

Labor and Industrial Relations Commission

Before Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Mertens Construction Company ("Mertens") appeals the decision of the Labor and Industrial Relations Commission ("Commission"), which affirmed a decision of the Appeals Tribunal finding that Mertens stands in the position of Prestage Quarries, Inc. ("Prestage") as a successor pursuant to section 288.110. Mertens argues that the Commission erred because Mertens did not acquire substantially all of the business or continue the business of Prestage without interruption, as required by section 288.110.

WE AFFIRM

Division Three holds:

(1) The Commission did not err in finding that Mertens stands in the position of Prestage under Section 288.110. The mere fact that a predecessor employer has terminated the employment of all its employees prior to the acquisition of the business by an employing unit does not prevent DES from finding that the employing unit shall stand in the position of the predecessor employer.

(2) The Commission did not err in finding that Mertens continued the business of Prestage without interruption. There was substantial competent evidence before the Commission that Mertens immediately and without interruption continued to sell crushed rock from Prestage's inventory and continued other aspects of Prestage's business operations. That there was a delay in obtaining a permit to operate a rock-crushing plant on the property acquired from Prestage following its acquisition by Mertens does not mandate a finding that the operation of the business was not continued uninterrupted under section 288.110.

Opinion by Gary D. Witt, Judge

May 17, 2016

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