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JURISDICTIONAL STATEMENT

This appeal is one involving the question of whether section 483.310.2, RSMo. violates the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, § 26 of the Missouri Constitution to the extent that it authorizes circuit court clerks to take private property—e.g., interest that has accrued on interpleaded funds deposited in the court’s registry—for public use without just compensation. MO. CONST. art. 5, § 3.

STATEMENT OF FACTS

On July 25, 1999, Trenton Best sustained severe injuries and his brother, Trevor, was killed when a boat piloted by William Logston collided with the boat Trenton and Trevor Best were riding on. LF 31–32. The collision occurred on Lake Viking in Daviess County, Missouri. LF 16–17. Tammy Best and John Best are the natural parents of Trenton Best and Trevor Best. LF 31. Trenton Best was 10 years old at the time of the collision and Trevor Best was 12. LF 31. Several other people were injured in the collision. LF 15–17.

At the time of the collision, William Logston was insured under a recreational vehicle policy issued by Respondent. LF 16–17. The policy had a liability limit of \$300,000 per occurrence. LF 16.

On September 25, 2000, Respondent filed a Petition in Interpleader in the Circuit Court of Daviess County, Missouri, asking the court to permit it to pay the \$300,000 policy limit into the court's registry, to order the interpleader defendants to interplea their respective claims and to discharge it from further liability with respect to the July 25, 1999 collision. LF 16–18. On February 14, 2001, the circuit court ordered Respondent to pay the sum of \$300,000 into the court's registry, that the interpleader defendants interplea their claims within 90 days and that Respondent be discharged from further liability to the interpleader defendants for damages sustained as a result of the July 25, 1999 collision. LF 28–29. On February 27, 2001, Respondent paid \$300,000 into the court's registry. LF 30.

Appellants filed their claims against the interpleaded funds on March 30, 2001. LF 31–32.

The interpleader defendants filed a Joint Stipulation for Division and Distribution of Interpleaded Funds on October 9, 2003. LF 35–41. By that time, \$12,327.75 in interest had accrued on the interpleaded funds. LF 36. On October 9, 2003, the court ordered Linda Adkins, the Circuit Clerk of Daviess County, to distribute \$312,327.75 pursuant to the joint stipulation filed by the interpleader defendants. LF 44–47. On October 20, 2003, the circuit court made the following order clarifying its October 9, 2003 Order:¹

Pursuant to Section 483.310(2), the Circuit Clerk is ordered to pay any interest accumulated in the Clerk’s Now Account, directly related to any money deposited in the above referenced case matter CV300-89CC, in distribution to the proper parties in said case matter, in absence of no prior application by the parties for this money to accumulate interest. LF 9.

1. The Honorable Rex Gabbert of the Seventh Judicial Circuit (Clay County) entered the October 9, 2003 and October 20, 2003 Orders. LF 44 --47He was subsequently replaced by then-Chief Justice Ronnie White with the Honorable Gary D. Witt of the Sixth Judicial Circuit (Platte County). Judge Witt set aside Judge Gabbert’s October 9, 2003 Order. LF 101–102.

Ms. Adkins eventually distributed \$300,000 to the interpleader defendants, but she refused to distribute the \$12,327.75 in interest which had accrued on the principal. LF 52–53. She informed Appellants’ counsel that she had used the interest to remodel her office. LF 53.

Because Ms. Adkins refused to comply with the circuit court’s October 9, 2003 and October 20, 2003 Orders requiring her to distribute \$12,327.75 in interest, the interpleader defendants filed a Motion for Contempt on February 6, 2004, which asked the circuit court to find Ms. Adkins in civil contempt and to fine her in the amount of \$12,327.75. LF 52–54. Ms. Adkins responded by filing a Motion for Reconsideration directed at the circuit court’s October 9, 2003 and October 20, 2003 Orders requiring Ms. Adkins to pay the interpleader defendants \$12,327.75 in addition to the \$300,000 Respondent had deposited in the court’s registry. LF 55. Appellants objected to any reconsideration on the basis that section 483.310.2, RSMo., which purported to authorize the clerk to appropriate the interest money, was unconstitutional. LF 65–70. The circuit court set aside the October 9, 2003 Order on February 17, 2005 and held that only \$300,000 was available for distribution to the interpleader defendants because Appellants and the other interpleader defendants did not comply with the requirements of section 483.310, RSMo. LF 101–102. On August 8, 2005, the circuit court entered its judgment approving the amended stipulated division of interpleaded funds which had been filed by the interpleader defendants on August 1, 2005. LF 117; 108–116.

POINT RELIED ON

I. The trial court erred in ordering, adjudging and decreeing in its February 17, 2005 Order that the total funds available for distribution between the parties is \$300,000.00, because section 483.310, RSMo., which authorized the Circuit Clerk of Daviess County to appropriate \$12,327.75 of interest which had accrued on \$300,000.00 of interpleaded funds deposited in the court's registry, violates the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 26 of the Missouri Constitution, in that interest accruing on interpleaded funds deposited in a court's registry is private property and the Clerk's appropriation of the interest which had accrued on the interpleaded funds deposited in the court's registry to compensate Appellants for their damages constituted a taking of Appellants' private property for public use without just compensation.

U.S. CONST. amend. V.

U.S. CONST. amend. XIV, § 1.

MO. CONST. art. 1, § 26.

Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980).

ARGUMENT

I. The trial court erred in ordering, adjudging and decreeing in its February 17, 2005 Order that the total funds available for distribution between the parties is \$300,000.00, because section 483.310.2, RSMo., which authorized the Circuit Clerk of Daviess County to appropriate \$12,327.75 of

interest which had accrued on \$300,000.00 of interpleaded funds deposited in the court's registry, violates the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 26 of the Missouri Constitution, in that interest accruing on interpleaded funds deposited in a court's registry is private property and the Clerk's appropriation of the interest which had accrued on the interpleaded funds deposited in the court's registry to compensate Appellants for their damages constituted a taking of Appellants' private property for public use without just compensation.

A. *Standard of Review*

Because the constitutional validity of a statute is a question of law, this Court reviews decisions passing on or relating to such questions de novo. *See, e.g., State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516–17 (Mo. 1991). If a statute conflicts with a constitutional provision or provisions, this Court must hold that the statute is invalid. *Id.* at 516.

B. *Section 483.310.2, RSMo. Is Unconstitutional*

Ms. Adkins' appropriation of the \$12,327.75 of interest which had accrued on funds deposited in the court's registry to compensate Appellants was a taking of private property for public use without just compensation. Accordingly, the statute which authorized her appropriation of the interest—section 483.310.2, RSMo.—is unconstitutional because it violates the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 26 of the Missouri Constitution.

The Fifth Amendment to the U.S. Constitution provides that private property shall not be taken for public use, without just compensation. Article 1, Section 26 of the Missouri Constitution similarly states that “private property shall not be taken or damaged for public use without just compensation.”

The U.S. Supreme Court has concluded that a law cannot authorize a public official’s appropriation of interest generated by a deposited fund because such appropriation constitutes a “taking” in violation of the Fifth Amendment. In *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), a circuit court clerk in Florida appropriated interest which had accrued on an interpleaded fund. In that case, the following Florida statute was at issue:

Section 28.33. Moneys deposited in the registry of the court shall be deposited in interest-bearing certificates at the discretion of the clerk All interest accruing from moneys deposited shall be deemed income of the office of the clerk of the circuit court investing such moneys and shall be deposited in the same accounts as are other fees and commissions of the clerk’s office.

The *Beckwith* Court held that section 28.33 violated the Fifth and Fourteenth Amendments to the U.S. Constitution² because (a) interpleaded funds deposited in

2. The Fifth Amendment’s prohibition of public takings of private property without just compensation is applicable to the states through the

a court's registry are the "private property" of those who will ultimately receive the funds,³ (b) the interest accruing on such funds is "private property," (c) a clerk's retention of interest under section 28.33 did not serve as a fee for services rendered and (d) a clerk's appropriation of interest accruing on interpleaded funds constituted a "taking." *See id.* at 164 (describing the prohibited conduct which the Florida legislature authorized by promulgating section 28.33).

The *Beckwith* Court's holding was based on the common law rule that "interest follows principal." *Id.* at 162. The Court noted that "**[t]he usual and general rule is that any interest on an interpleaded fund follows the principal and is to be allocated to those who are ultimately to be the owners of that principal.**" *Id.*

Since *Beckwith*, the U.S. Supreme Court has addressed the constitutionality of laws authorizing the "taking" of interest in two cases. In *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), the Court examined a Texas Supreme

Fourteenth Amendment. *See, e.g., Phillips v. Washington Legal Foundation*, 524 U.S. 156, 163–64 (1998) (citing *Chicago, B & Q.R. Co v. Chicago*, 166 U.S. 226, 239 (1897)).

3. Whether interpleaded funds and interest accruing thereon are "private property" is determined by consulting sources independent from the Constitution, such as the parties' reasonable expectations or state law. *Beckwith*, 449 U.S. at 161.

Court rule requiring attorneys to place client funds in interest on lawyers' trust accounts (IOLTA). The rule also required interest earned on such accounts to be paid to a foundation which provided legal services to low income persons. The Court held that interest which accrues on IOLTA accounts is the "private property" of the clients whose funds are deposited therein based on the rule that "interest follows principal." *Id.* at 165–72. The Court did not address whether the interest had been "taken" or whether "just compensation" was due. *Id.* at 172.

In *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003), the Court examined a Washington Supreme Court rule which established an IOLTA program with the interest generated on IOLTA funds going to finance legal services for low income individuals. The rule required Washington attorneys to place all client funds into interest-bearing accounts, but stated that client funds could only be placed in an IOLTA account if the client would not realize any *net interest* (i.e., the interest is so nominal that the costs of getting it into the client's hands would exceed the amount of interest). The Court affirmed that the interest generated on funds in IOLTA accounts is "private property." *Id.* at 235. The Court went on to hold that "just compensation" was not due to the clients who had funds in the IOLTA account because, under the Washington rule, the IOLTA accounts did not generate *net interest* for the clients. *Id.* at 240–41. Funds that would have generated net interest had to be placed in other types of interest-bearing accounts. *Id.* at 224–25. However, the *Brown* Court did state that a law authorizing the appropriation of interest which accrues on deposited funds for a

public use is a per se taking requiring the payment of just compensation if the owner of the interest suffers a pecuniary loss. *See id.* at 240 (discussing when a taking occurs in relation to a transfer of interest).

Ms. Adkins contends that section 483.310.2, RSMo. gives her the right to retain the \$12,327.75 of interest which accrued on the \$300,000.00 deposited in the court's registry on February 27, 2001. However, section 483.310.2 is unconstitutional to the extent that it authorizes circuit court clerks to retain interest generated on private funds deposited in a court registry.

Section 483.310.1, RSMo. provides that when funds are deposited in the registry of a circuit court the court, "upon its own finding or after application by one of the parties, that such funds can be reasonably expected to remain on deposit for a period sufficient to provide income through investment, the court may make an order directing the clerk to deposit such funds [in a separate interest-bearing account]." Section 483.310.2 authorizes circuit clerks to transfer funds deposited in the registry into separate interest-bearing accounts and use the interest accruing thereafter for different public purposes, such as purchasing legal publications, if a party fails to make an application contemplated by section 483.310.1 within sixty days after the funds are deposited in the court's registry.

Ms. Adkins' actions, taken pursuant to section 483.310.2, constituted a taking of private property for public use without just compensation. First, the \$300,000.00 Respondent deposited in the court's registry was private property belonging to Appellants and the other interpleader defendants. *See* LF 57-64

(contesting the October 9, 2003 Order's distribution of \$12,327.75 of interest money, but not contesting its distribution of \$300,000.00 in principal to the interpleader defendants). Second, the interest which accrued on the deposited fund was private property. *Phillips*, 524 U.S. at 172; *see also State Highway Comm'n v. Spainhower*, 504 S.W.2d 121, 126 (Mo. 1973) ("Interest earned by a deposit of special funds is an increment accruing thereto."). Third, Ms. Adkins appropriated the \$12,327.75 of interest for public uses. LF 59. Fourth, because appellants have been deprived of the interest they have suffered a pecuniary loss. Fifth, the Appellants' interest did not serve as a fee for "services rendered" by the clerk.

Under *Beckwith*, *Phillips* and *Brown*, section 483.310.2 is unconstitutional because it authorized Ms. Adkins to take interest generated on interpleaded funds belonging to Appellants for public use without just compensation. The interest Ms. Adkins appropriated was "private property." *Phillips*, 524 U.S. at 171–72. Ms. Adkins' taking of the interest did not serve as payment of a fee for "services rendered." *Beckwith*, 449 U.S. at 164. And Ms. Adkins' taking of the interest caused Appellants to sustain a considerable pecuniary loss. *Brown*, 538 U.S. at 240.

In sum, Ms. Adkins took Appellants' private property for public use without just compensation when, pursuant to section 483.310.2, RSMo., she appropriated \$12,327.75 of interest which had accrued on funds belonging to Appellants and the other interpleader defendants. Such a "taking" is prohibited by

the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 26 of the Missouri Constitution. Therefore, section 483.310.2, RSMo. is unconstitutional to the extent that it authorizes circuit clerks to appropriate interest generated by private funds deposited in a court's registry without providing just compensation to the owners of such interest. Accordingly, an additional \$12,327.75 was available for distribution to Appellants and the other interpleader defendants, meaning the circuit court's holding that no more than \$300,000.00 was available for distribution was in error.

CONCLUSION

For the reasons set forth above, this Court should reverse the February 17, 2005 Order and the August 8, 2005 Judgment entered by the circuit court and remand the case to the circuit court with instructions to enter an order decreeing that an additional \$12,327.75 remains available for distribution to Appellants and the other interpleader defendants.

Respectfully submitted

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RULE 84.06(c) CERTIFICATE OF COMPLIANCE

I hereby certify that Appellants' Brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 3,056 words and 459 lines of text.

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CERTIFICATE OF SERVICE

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APPENDIX

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CERTIFICATION OF VIRUS FREE DISK

I hereby certify that the disk filed with and containing Appellants' Brief has been scanned for viruses and is virus free.

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